No. 17-17504

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PEYMAN PAKDEL; SIMA CHEGINI,

Plaintiffs – Appellants,

v.

CITY AND COUNTY OF SAN FRANCISCO;
SAN FRANCISCO BOARD OF SUPERVISORS;
SAN FRANCISCO DEPARTMENT OF PUBLIC WORKS,

Defendants – Appellees.

On Appeal from the United States District Court
for the Northern District of California
Honorable Richard Seeborg, District Judge

APPELLANTS' OPENING BRIEF

PAUL F. UTRECHT
Utrecht & Lenvin, LLP
109 Stevenson Street, 5th Floor
San Francisco, California 94105
Telephone: (415) 357-0600
E-mail: putrecht@ullawfirm.com

THOMAS W. CONNORS
Black McCuskey Souers
& Arbaugh, LPA
220 Market Ave. S., Suite 1000
Canton, Ohio 44702
Telephone: (330) 456-8341
Email: tconnors@bmsa.com

JAMES S. BURLING
JEFFREY W. McCOY
KAYCEE M. ROYER
Pacific Legal Foundation
930 G Street
Sacramento, California 95814
Telephone: (916) 419-7111
Facsimile: (916) 419-7747
E-mail: jburling@pacificlegal.org
E-mail: jmccoy@pacificlegal.org
E-mail: kroyer@pacificlegal.org

Attorneys for Plaintiffs – Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other Authorities

STATEMENT OF JURISDICTION

Plaintiffs Peyman Pakdel and Sima Chegini (the Pakdels) brought suit pursuant to 42 U.S.C. § 1983, invoking that the court's federal question jurisdiction, 28 U.S.C. § 1331. The Pakdels also brought state law claims seeking to invoke the district court's pending jurisdiction. The district court dismissed all of the Pakdels' claims on November 20, 2017. The Pakdels timely filed their notice of appeal on December 18, 2017. This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

STATEMENT OF ISSUES

1. Whether a federal district court can hear takings challenges to a City ordinance that requires owners of condominiums to offer their tenants lifetime leases.

2. Whether a City ordinance that prevents owners of certain condominiums from living in that condominium, unless and until the tenant moves out or passes away, effects a seizure under the Fourth and Fourteenth Amendments.

3. Whether a City ordinance that requires owners of certain condominiums to issue lifetime leases interferes with the constitutional right to privacy.

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS

The pertinent legal provisions are set forth in the addendum to this brief.

INTRODUCTION

Plaintiffs, Peyman Pakdel and Sima Chegini (the Pakdels), purchased a Tenancy in Common (TIC) interest in a six-unit building in San Francisco in 2009, giving them ownership rights in one of the units. Volume 1, Excerpts of Record (ER) 1-2. The terms of the sale required the Pakdels to enter into a Tenancy in Common Agreement (Agreement) which required them to cooperate with any efforts to convert the TIC interests into individual condominiums. 2 ER 294. Dreaming of one day retiring to the property, the Pakdels did not move in immediately because of their careers in Ohio. Instead, the Pakdels rented their interest to a tenant. 2 ER 294.

At the time the Pakdels decided to lease their Unit to a tenant, there was no penalty for leasing their property, especially not a Lifetime Lease Requirement. As a result, the Pakdels did not see any issue with

leasing out their unit until they were ready to retire and move to San Francisco.

That changed in 2013, when the City and County of San Francisco (City) enacted Ordinance 117-13 (Ordinance) and established the Expedited Conversion Program (ECP). 2 ER 294-95. Under the ECP, any application for TIC conversion must offer a lifetime lease to any non-owning tenants at time of conversion (Lifetime Lease Requirement).[1] 2 ER 295. The City adopted the Lifetime Lease Requirement knowing that many tenants in common had entered into agreements requiring the conversion of their TIC interests upon the first available opportunity. ER 294-95. The Pakdels, bound by the Agreement, were forced to undertake conversion and offer a lifetime lease to their tenant. 2 ER 295.

The Lifetime Lease Requirement violates multiple constitutional provisions. Most notably, the Lifetime Lease Requirement effectuates a taking of the Pakdels' property by requiring them to surrender one of the essential sticks in their bundle of property rights, the right to possess their own property. Second, the Lifetime Lease Requirement violates the

[1] Including any tenant who resided in the property during the last 12 months for more than 30 days.

Pakdels' fundamental right to privacy because it forbids them from removing someone from their own property, causing violations of both Due Process and Equal Protection. Finally, the Lifetime Lease Requirement effects an unreasonable government seizure of the Pakdels' property, in violation of the Fourth Amendment.

Accordingly, the Pakdels filed a complaint in federal court asserting these multiple constitutional claims against the City. The district court dismissed the Pakdels' federal takings claims as being unripe under *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City* (*Williamson County*), 473 U.S. 172 (1985). It also dismissed their non-takings constitutional claims for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).

These holdings were mistaken. The court was wrong in dismissing the Pakdels' federal takings claim for lack of ripeness. *Williamson County*'s state exhaustion doctrine is a flexible prudential concept, which courts can waive as circumstances warrant. Indeed, the Supreme Court will decide next term whether it will overturn *Williamson County*. *See Knick v. Township of Scott, Pennsylvania*, 862 F.3d 310 (3d Cir. 2017), *cert. granted*, No. 17-647, 2018 WL 1143827 (U.S. Mar. 5, 2018). This

Court should decline to require the Pakdels to go through inefficient state litigation given the concrete nature of the issues and the fairness and judicial economy concerns that warrant immediate review. Even if the court were to find no prudential reasons to permit federal court review of the Pakdels' takings claims, this court should hear the Pakdels' claim that the taking of their property was not for public use because these claims do not need to meet the *Williamson County* ripeness requirements.

Additionally, the court erred when it dismissed the Pakdels' Due Process, Equal Protection, and Fourth Amendment claims for failure to state a claim. The Lifetime Lease Requirement unreasonably seized the Pakdels' property in violation of the Fourth Amendment as incorporated through the Fourteenth Amendment. When the City required the Pakdels to give their tenant a lifetime lease in the property, it violated their fundamental right to privacy. Furthermore, because the Lifetime Lease Requirement is not narrowly tailored to advance a compelling governmental interest, it is unconstitutional under the Fourteenth Amendment. Accordingly, the Court should reverse and remand to the district court for further proceedings.

FACTS

A. In 2009, the Pakdels purchased their San Francisco property with an understanding of the existing conversion laws.

The Pakdels, Peyman Pakdel and Sima Chegini, are a married couple from Akron, Ohio. 2 ER 294. In 2009, they purchased a tenancy-in-common (TIC) interest in a six-unit apartment building in San Francisco. 2 ER 294. Their TIC interest gave them an exclusive right to occupy a single unit in the building (Unit). 1 ER 2. Planning to someday retire to San Francisco, the Pakdels purchased the property as a means for securing a future home to retire to. 2 ER 294. Since the Pakdels still have careers in Ohio, they did not immediately occupy the Unit. 2 ER 294.

Upon purchasing their TIC interest, the Pakdels were required to execute a Tenancy In Common Agreement (Agreement). 2 ER 294. The Agreement required the Pakdels to cooperate in any efforts to convert the TIC interests to condominiums. 2 ER 294. This clause is common in San Francisco TIC Agreements because one of the main objectives of such agreements is to convert to condominiums so the co-tenants can gain title to their respective Units. 2 ER 294. At the time, the Pakdels entered into

the Agreement there was no requirement to offer lifetime leases to existing tenants in order to convert TIC interests into condominiums. 2 ER 294; *see also, infra B.*

In 2009, when the Pakdels entered into the Agreement, the City was using a conversion lottery, which preserved the rights of converting owners to raise rents to market rates under the Costa Hawkins Act, to perform "Owner Move In" evictions under the San Francisco Rent Ordinance, and to quit the rental business under the Ellis Act. *See* 2 ER 296. Thus, the Pakdels rightfully believed that upon conversion to a condominium, these laws would still cover their Unit. 2 ER 294.

In 2010, the Pakdels leased their Unit to a residential tenant. 2 ER 294. The lease was intended to be temporary—in accordance with San Francisco rent control laws—because the Pakdels intended to move to their Unit upon retirement. 2 ER 294. At the time the Pakdels signed the Agreement they believed they would have the option to perform an "Owner Move In" eviction under the San Francisco Rent Ordinance and to quit the rental business altogether under the Ellis Act. 1 ER 2. Now, if the tenant outlives the Pakdels, they will never get the opportunity to move into their retirement home.

B. In 2013, San Francisco changes the laws concerning condominium conversions.

In 2013, to fix a backlog of TIC conversions that had occurred due to the conversion lottery, the City enacted Ordinance 117-13 (Ordinance). The Ordinance put a moratorium on the condominium conversion lottery and created the Expedited Conversion Program (ECP). 2 ER 294-95.

As a condition of approval under the ECP, any applicant for conversion must offer a lifetime lease to any existing non-owning tenants. 2 ER 294-95. The City adopted the ECP despite being aware of the provisions in TIC Agreements that required that co-tenants do everything necessary to convert to condominiums. 2 ER 294-95.

Under the Ordinance, there is no income requirement to be eligible for a lifetime lease. 2 ER 292. Rich tenants as well as low-income ones are entitled to lifetime leases. 2 ER 292. The Lifetime Lease Requirement results in blatant transfers of wealth from one private citizen to another, without considering whether this transfer satisfies an actual need. 2 ER 292. As such, the Lifetime Lease Requirement cannot advance its stated purpose of providing housing to low- and moderate-income households. 2 ER 292. In fact, the Lifetime Lease Requirement can have the opposite effect, sometimes barring those in need from returning to

their own homes. 2 ER 292. Furthermore, because of tenant laws in San Francisco, a lifetime lease could result in numerous people living in the apartment that the property owner never approved. For example, people who move in with a tenant can easily establish co-tenant status and cannot be removed from the unit despite restrictions in rental agreements. [2]

City officials opine that the conversion of apartments into condominiums will result in the mass displacement of existing tenants. 2 ER 151. The City did not sample the pool of conversion applicants to learn how many apartments were occupied, how many were owner occupied, how many owners had loans, or how many owners planned to change the use of their interest upon conversion. Instead, the City based its decision to impose a lifetime lease requirement upon the opinions of hand-selected City officials. To justify the new Ordinance, the City commissioned a KMA Economic Report. *See* 2 ER 84. The conclusions set

[2] *See* Brock Keeling & Lamar Anderson, *Renting in San Francisco: What happens when my roommate leaves?*, Curbed (Aug. 7, 2017), https://sf.curbed.com/2017/8/7/16107364/rent-sf-roommate-leaves-landlord; *see also* San Francisco Tenants Union, Roommates, https://www.sftu.org/roommates/ (last visited Apr. 20, 2018).

forth in the Report are not based upon the actual economic review of the effect of conversion of actual units and the impacts on actual owners.

The Report itself identifies the inadequacies of the study:

> It is difficult to rely on published data to assess the TIC real estate market, because it is a relatively small part of the market and is seldom tracked separately from the condo market. To develop an understanding of the TIC market, as well as the relationships between TIC values, condo values, and rent levels, KMA conducted a series of interviews with persons highly familiar with TIC conversions. The interviewees were selected with input from City staff and represent several aspects of the TIC conversion activity—realtors, lawyers, mortgage brokers, TIC owners, and city staff. The interviews were conducted with the understanding that KMA would not attribute specific facts or opinions to individuals, but rather would develop an overview of the TIC/condo conversion market based on the information provided by all of the experts.

2 ER 106.

Thus, the conclusions of the Report are based upon interviews, not available facts. Furthermore, the Report itself never actually analyzed the effects that a lifetime lease would have. 2 ER 91. The selected experts were unaware of the imposition of a Lifetime Lease Requirement, and, thus, were unable to take it into account when arriving at their conclusions. *See generally,* 2 ER 91. The Report failed entirely to take into consideration what effect a lifetime lease provision would have on

displaced unit owners who plan to return to their units someday, the decrease in the value of property, or other economic costs of such a provision. 2 ER 91. Therefore, it is highly problematic for the City to rely on the Report as justification for the Lifetime Lease Requirement.[3]

C. Enforcement of Lifetime Lease Requirement against the Pakdels

Because the change in the conversion program did not change the Pakdels' duty to comply with the Agreement, they were required to undergo TIC conversion in 2015. 2 ER 295-97. While the Pakdels and their co-tenants had tried to obtain conversion under the previous lottery system, they had never been selected. Under the ECP, the Pakdels and their co-tenants obtained permission under San Francisco law to subdivide their TIC property into six condominiums. 2 ER 295-96. As a condition of conversion, the Pakdels submitted to the San Francisco Department of Public Works lease documents relating to the Unit. 2 ER 295-96. They were also required to submit an agreement with the

[3] Furthermore, the district court improperly relied on the Report at the motion to dismiss stage. The Pakdels were never given a chance to refute the Report with their own experts.

City to offer a lifetime lease of the Unit to the tenant residing there at the time of the conversion. 2 ER 295-96.

The condominium deeds for the building were recorded on March 25, 2017. 2 ER 296. The Pakdels' tenant submitted an executed lifetime lease on or about May 5, 2017. 2 ER 296. On June 9 and again on June 13 of 2017, the Pakdels requested that the City not require them to execute and record the lifetime lease under the Lifetime Lease Requirement, or in the alternative to provide compensation for the recording of the lifetime lease against their property. 2 ER 296. The City refused both requests and indicated that the failure to execute the lifetime lease would be a violation of the Ordinance, subjecting the Pakdels to an enforcement action. 2 ER 296-97. The Pakdels fear they will be subject to an enforcement action against them in October 2018, when the lifetime lease offer expires without their signature.

STATEMENT OF THE CASE

On June 26, 2017, the Pakdels filed a complaint against the City and County of San Francisco. *See* 2 ER 291-309. The complaint alleged that the Lifetime Lease Requirement violated the Takings Clause of the Fifth Amendment made applicable to the states through the Fourteenth

Amendment; constituted an unreasonable seizure of the Pakdels' property under the Fourth Amendment; and violated the Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments. 2 ER 297-303. The Pakdels asked the court for damages and declaratory judgment that the Lifetime Lease Requirement violates the federal and state constitutions. 2 ER 308-09.

The City filed a motion to dismiss the complaint under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). On November 20, 2017, the court granted the City's motion. 1 ER 1. The court first found that the Pakdels' takings claims were not ripe under *Williamson County*. 1 ER 1. It also dismissed the Pakdels' other constitutional claims, determining that the Pakdels had failed to state claims under the Due Process Clause and the Equal Protection Clause.[4] 1 ER 1. The Court dismissed the Pakdels' Fourth Amendment claim, finding that they had voluntarily allowed the City to seize their property when they applied to convert their TIC interest. 1 ER 10-11. The court also held that the Pakdels did not

[4] The Plaintiffs also brought several state law and state constitutional claims, which were dismissed and are not appealed. *See* 1 ER 11-15.

have a fundamental privacy right in their home because they had chosen to lease it to a tenant. 1 ER 9-10.

The Pakdels timely filed their notice of appeal.

SUMMARY OF ARGUMENT

The Lifetime Lease Requirement violates the Constitution in several respects. First, the Lifetime Lease Requirement violates the Takings Clause because it takes away the Pakdels' right to occupy their home, instead giving it to the tenant for the remainder of his life. Second, the Lifetime Lease Requirement violates the Fourth Amendment because it unreasonably seizes the Pakdels' property. Finally, the Lifetime Lease Requirement violates the Fifth and Fourteenth Amendments because it interferes with the Pakdels' fundamental right to privacy in their home. The Pakdels adequately alleged these constitutional violations, and should have the opportunity to litigate them.

The Lifetime Lease Requirement takes the Pakdels' property without requiring the City to pay compensation. Contrary to the lower court's opinion, all of the Pakdels' takings claims are ripe for review. Because *Williamson County* is a prudential doctrine, not a strict jurisdictional rule, this Court can and should decline to require state

litigation for ripeness. Here it is wasteful, unnecessary, and unfair to demand that the Pakdels split their litigation between the state and federal courts.

Additionally, *Williamson County Reg'l Planning Comm'n v. Hamilton Bank*, 473 U.S. 172 (1985), does not apply to takings that do not serve a public purpose. The Lifetime Lease Requirement forces any property owners with tenants that undergo TIC conversions to grant lifetime leases to those tenants. This compels any property owner who undergoes conversion to give up the right to occupy their property for the remaining life of the tenant with no hope of compensation for this taken right. The Pakdels do not need to waste resources going through fruitless state litigation in order for a federal court to decide that the City has effectuated a taking without just compensation.

Furthermore, the Lifetime Lease Requirement violates the Fourth Amendment's protection against unreasonable government seizures of one's home. Here, the City forced the Pakdels to give their tenant a lifetime lease in the property. The City knew when enacting the Ordinance that the Pakdels and others were contractually required to undergo conversion because of the TIC Agreement. Thus, the Lifetime

Lease Requirement effected an unreasonable seizure of the Pakdels' home.

Finally, under the Due Process and Equal Protection Clause, the City's Lifetime Lease Requirement violates the Pakdels' fundamental right to privacy. The lower court erred when it found that the Pakdels did not have a fundamental right of privacy in their home. The fundamental right of privacy has a long history in our nation and derives support from various constitutional provisions. The City interfered with that right by removing the Pakdels' right to exclude the tenant from their home.

The Court should accordingly reverse the district court's dismissal of the Pakdels' Fifth, Fourth, and Fourteenth Amendment claims against the Lifetime Lease Requirement and remand those claims for further litigation.

STANDARD OF REVIEW

This case comes to this Court after the district court dismissed the Pakdels' Fifth Amendment claims as unripe and their Fourth and Fourteenth Amendment claims for a failure to state a claim under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). An appellate court

reviews the district court's grant of a motion to dismiss for lack of subject matter jurisdiction and for failure to state a claim *de novo*. *Brewster v. Sun Tr. Mortg., Inc.*, 742 F.3d 876, 877 (9th Cir. 2014); *Viewtech, Inc. v. United States*, 653 F.3d 1102, 1103 (9th Cir. 2011).

The court reviews the dismissal of a takings claim for lack of ripeness *de novo*, with all the factual allegations viewed in the light most favorable to the plaintiffs. *Hacienda Valley Mobile Estates v. City of Morgan Hill*, 353 F.3d 651, 654 (9th Cir. 2003). Similarly, when considering a dismissal for failure to state a claim upon which relief can be granted, the Court must afford the plaintiffs' allegations the benefit of any doubt. *Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005). More specifically, when considering dismissal of a Fourth Amendment claim, the Court can sustain the district court's action only if it concludes that the plaintiffs could prove no set of facts entitling them to relief for a "seizure." *Brower v. County of Inyo*, 489 U.S. 593, 598 (1989).

ARGUMENT

I. The lower court erred when it dismissed the Pakdels' takings claims as unripe under *Williamson County*.

The lower court was wrong to dismiss the Pakdels' takings claims. *Williamson County* is a prudential rule that allows federal courts to use their discretion to grant review. *Williamson County* held that a claim that the application of government regulations effects a taking of a property interest is not ripe until the government entity charged with implementing the regulations has reached a final decision *and* the plaintiff has sought compensation through the procedures the State has provided for doing so. *Williamson County*, 473 U.S. at 186, 194.

This Court has recognized that the *Williamson County* requirement is non-jurisdictional. *Guggenheim v. City of Goleta*, 638 F.3d 1111, 1118 (9th Cir. 2010) (en banc); *McClung v. City of Summer*, 548 F.3d 1219, 1224 (9th Cir. 2008). The Supreme Court has agreed, holding that federal courts do not need to dismiss takings claims that have not undergone state litigation. *Suitum v. Tahoe Reg'l Planning Agency*, 520 U.S. 725, 734 (1997).

Furthermore, the Pakdels assert that the taking of their property was not for a public purpose, and thus, the claim should not be subject to the *Williamson County* requirements.

A. There are no prudential reasons for the Court to cede jurisdiction in this case.

In the instant case, there are no prudential reasons for this Court to cede jurisdiction to the state courts. *Williamson County* is merely a prudential rule that allows federal courts to hear takings claims in appropriate circumstances. *Guggenheim*, 638 F.3d at 1118.

Many different courts have articulated when it is appropriate for a federal court to hear federal takings claims even when the plaintiff has not sought relief in state court.[5] Several courts have held that *Williamson County* is similar to the broader ripeness doctrine, and they may refuse to apply the state litigation requirement when considerations relevant to prudential ripeness, such as efficiency, judicial economy, and fairness, warrant immediate takings review. *See, e.g.*, *Town of Nags Head v.*

[5] For example, several courts have held that the state litigation requirement can be waived, and the takings plaintiff exempted from its application, when a defendant does not affirmatively raise or preserve the *Williamson County* ripeness issue. *See, e.g.*, *Guggenheim*, 638 F.3d at 1111.

Toloczko, 728 F.3d 391, 399 (4th Cir. 2013); *Yamagiwa v. City of Half Moon Bay*, 523 F. Supp. 2d 1036, 1108-10 (N.D. Cal. 2007); *see also Guggenheim*, 638 F.3d at 1118.

In this case, the prudential considerations weigh in favor of holding that the Pakdels' taking claim is ripe without state court litigation. The claim is concrete, the issues are capable of resolution now, and there is a great risk that unfairness and hardship will result if the court requires state court litigation as a predicate to federal review. Finally, immediate review will serve judicial economy and avoid improper piecemeal litigation.

First, it is clear that this is not a case that challenges a future or hypothetical taking. The claims arise from a duly adopted ordinance that plainly requires owners to offer any non-owning tenant the right to a lifetime lease upon conversion of a TIC interest. 2 ER 295. The City has enforced the Lifetime Lease Requirement against the Pakdels, requiring them to offer a lifetime lease in their property to their tenant, and has not paid compensation, nor offered it.[6] 2 ER 295-97. Neither the

[6] The City did offer the Pakdels a refund for part of the costs of conversion upon finalization of the lifetime lease; however, this was not compensation for the lifetime lease since all TIC conversion owners

Ordinance nor the City provides the Pakdels with the opportunity to seek compensation for the loss of the right to occupy their home. 2 ER 295-97.

Second, it serves judicial economy for a federal court to hear the claims now. Sending the Pakdels' claims to state court would likely result in "piecemeal litigation," with some of the Pakdels' constitutional claims sent to state court while others are left to the federal court. This would lead to further delays and increased costs of litigation for the Pakdels.

Third, it is unnecessary and unfair to send the Pakdels' claims to the state court when the federal court is capable of resolving the claims now. The Fifth Amendment creates an important federal constitutional right and this Court is more than capable of hearing constitutional claims. *Dolan v. City of Tigard*, 512 U.S. 374, 392 (1994) ("We see no reason why the Takings Clause of the Fifth Amendment, as much a part of the Bill of Rights as the First Amendment or Fourth Amendment, should be relegated to the status of a poor relation . . . ."). The founders established the federal judiciary for giving effect to and directing the States in the enforcement of the Constitution. The Federalist No. 80

---

receive this refund. In any event, it certainly was not "just compensation" for the loss of value caused by the Lifetime Lease Requirement.

(Alexander Hamilton): The Powers of the Judiciary ("[T]here ought always to be a constitutional method of giving efficacy to constitutional provisions . . . . This power must either be a direct negative on the State laws, or an authority in the federal courts to overrule such as might be in manifest contravention of the [Constitution]."). Furthermore, the federal judiciary is designed to ensure the uniformity in the interpretation of the national laws.

Thus, this Court should waive the state procedures doctrine for the foregoing reasons.

B. The taking is not for a public use, and thus, the Pakdels' private takings claim is ripe.

The Pakdels' private takings claim is exempt from *Williamson County*'s ripeness doctrine under *Armendariz v. Penman*, 75 F.3d 1311, 1320 n.5 (9th Cir. 1996). The *Williamson County* requirement only applies when a party seeks compensation for a taking. *See Williamson County*, 473 U.S. 172. A "private taking," or a government taking that does not satisfy the public use requirement, cannot be constitutional even if compensated. *Armendariz*, 75 F.3d at 1320 n.5. Thus, plaintiffs would not need to seek compensation in state proceedings before filing a federal takings claim under the rule of *Williamson County*. *Id.*

In *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 543 (2005), the Supreme Court affirmed this point by observing that no amount of compensation can authorize a taking that fails to meet the public use requirement. The Court found that the Takings Clause "expressly requires compensation where government takes private property *for* '*public use*.'" *Id.* It does not bar the government from interfering with certain property rights, but, rather, requires compensation when it does interfere. *Id.*

The lower court found that the private takings claim was part of a standard regulatory claim and, thus, subject to *Williamson County* ripeness requirements. However, the case the lower court cites to for this proposition does not support dismissal for lack of ripeness. 1 ER 6. In *Rancho de Calistoga v. City of Calistoga*, 800 F.3d 1083, 1089 (9th Cir. 2015), the court held that the plaintiff's claims were indeed ripe and could not be dismissed under 12(b)(1). Instead, the court in *Rancho de Calistoga* found the plaintiff had failed to state a separately cognizable private takings claim and dismissed the claim as lacking merit. *Id.* at 1093.

Here, the Pakdels' claim, like the claim in *Rancho de Calistoga*, is ripe because it asserts a private takings claim. "[I]t has long been accepted that the sovereign may not take the property of *A* for the sole purpose of transferring it to another private party *B*, even though *A* is paid just compensation." *Kelo v. City of New London, Conn.*, 545 U.S. 469, 477 (2005). Cities are not allowed to take property under the mere pretext of public purpose, when instead its actual purpose is to bestow a private benefit. *Id.* at 478. Here, the Pakdels allege that the City has taken their property for the sole purpose of benefiting another private party, thus constituting a private taking. 2 ER 297. *Williamson County* does not prevent the Pakdels from being able to bring evidence in support of that claim.

Therefore, dismissal of the Pakdels' takings claims under *Williamson County* for lack of ripeness was incorrect.

C. In any event, it is possible that *Williamson County* will be overturned by the Supreme Court.

The Supreme Court decided *Williamson County* in 1985, and due to its dysfunctional impact and questionable foundation, courts have been struggling to apply it ever since. *See* Michael M. Berger, *Supreme Bait & Switch: The Ripeness Ruse in Regulatory Takings*, 3 Wash. U. J.L. & Pol'y

99 (2000). *Williamson County* has caused injustice and conflict in federal takings litigation. *See* J. David Breemer, *The Rebirth of Federal Takings Review? The Courts' "Prudential" Answer to Williamson County's Flawed State Litigation Ripeness Requirement*, 30 Touro L. Rev. 319 (2014); J. David Breemer, *Dying on the Vine: How a Rethinking of "Without Just Compensation" and Takings Remedies Undercuts Williamson County's Ripeness Doctrine*, 42 Vt. L. Rev. 61 (2017). In fact, the *Williamson County* decision has caused so many problems in the orderly development of takings law the Supreme Court has recently granted the Petition for Writ of Certiorari in *Knick v. Scott Township* to decide whether to overturn *Williamson County*. *See Knick v. Township of Scott, Pennsylvania*, 862 F.3d 310 (3d Cir. 2017), *cert. granted,* No. 17-647, 2018 WL 1143827 (U.S. Mar. 5, 2018). This grant further demonstrates the uncertainty surrounding the applicability of the *Williamson County* requirement, which this Court should take into consideration when determining the ripeness of the Pakdels' claims.

II. The lower court erred when it dismissed the Pakdels' seizure claim.

The Lifetime Lease Requirement in this case so disrupts settled property expectations that it violates the Pakdels' right against

unreasonable seizures that is protected by the Fourth Amendment, as incorporated through the Fourteenth Amendment. The Lifetime Lease Requirement goes beyond a mere interference with a property right and instead gives away the Pakdels' right to exclude unwanted third parties from their property by unreasonably seizing a lifetime lease in their property.

A. The Pakdels adequately alleged that the Lifetime Lease Requirement constitutes a seizure of their property interests.

The Fourth Amendment protects against unreasonable seizures of a person's home, as is incorporated against state and local governments through the Fourteenth Amendment. *See Mapp v. Ohio*, 367 U.S. 643, 655 (1961). The Constitution's protection of possessory interests is not limited to contexts where privacy or liberty interests alone are implicated. *Soldal v. Cook Cty.*, 506 U.S. 56, 62 (1992) ("[O]ur cases unmistakably hold that the Amendment protects property as well as privacy."). A seizure occurs when there is some meaningful interference with an individual's possessory interests in the property seized. *See United States v. Jacobsen*, 466 U.S. 109, 113 (1984). A "meaningful interference" occurs when the character of the property is profoundly

different with the interference than without it. *See United States v. Karo*, 468 U.S. 705, 729 (1984) (Stevens, J., concurring) (finding that the government had converted plaintiff's property for its own purposes); *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 53-54 (1993) (deprivation of right to occupy and right to unrestricted use of home constitutes a seizure); *Presley v. City of Charlottesville*, 464 F.3d 480, 487 (4th Cir. 2006) (seizure occurred when plaintiff could not remove government endorsed trespassers from her property).

The City Lifetime Lease Requirement profoundly altered the character of the Pakdels' interest in their property. Prior to the Lifetime Lease Requirement, the applicable laws allowed the Pakdels to end the lease with their tenant and move in to the property. Thus, the lease reflected a periodic tenancy between the Pakdels and their tenant, and the Pakdels could terminate the tenancy with sufficient notice. *See* Restatement (Second) of Property, Land. & Ten. § 1.5 (1977). At a minimum, the Pakdels held a power of termination interest in the property that they could exercise on the condition that they live in the unit. *See* Restatement (First) of Property § 155 (1936). Now the tenant's interest is more akin to a life-estate, and the Pakdels have no right to

possess their property unless and until the tenant passes away or voluntarily moves out.

The district held that the Lifetime Lease Requirement did not result in a seizure, relying solely on *Maryland v. Macon*, 472 U.S. 463, 469 (1985). 1 ER 11. *Macon* is inapposite. There, the Court held that there was no meaningful interference with an owner of an adult bookstore's possessory interest in a magazine after the owner sold the magazine. 472 U.S. at 469. But the owner in *Macon* had made a permanent transfer of the magazine and retained no rights in the magazine. *Id.* at 465, 469. Here, the Pakdels never permanently transferred their property and they retained a future possessory interest in the unit. *Cf. Luis v. United States*, 136 S. Ct. 1083, 1092-93 (2016) (plurality op.) (noting that the future interests in the law of property can impact the constitutional analysis).

Here, by requiring the Pakdels to grant their tenant a lifetime lease, the Lifetime Lease Requirement effects a meaningful interference with their possessory interests. The Pakdels no longer have the right to possess their home, enjoy their home, or remove individuals from their home. *See* 2 ER 301. Based on the allegations in the Complaint, the

district court could not hold that the Lifetime Lease Requirement does not constitute a seizure of the Pakdels' property.

B. The Pakdels adequately alleged that the Lifetime Lease Requirement's seizure of the Pakdels' property right is unreasonable.

The Pakdels also adequately alleged that the Lifetime Lease Requirement's seizure was unreasonable. *See* 2 ER 301. "The Supreme Court has adopted a balancing test to determine whether a seizure is unreasonable." *United States v. Sullivan*, 797 F.3d 623, 633 (9th Cir. 2015). The balancing test requires the court to balance "the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." *Id.* (quoting *United States v. Place*, 462 U.S. 696, 703 (1983)). Importantly, this balancing test is a factual question, which takes into account the totality of the circumstances. *Id.* at 634.

As applied to the Pakdels, the Lifetime Lease Requirement interferes substantially with their property interests. *See Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 673 (1999) ("The hallmark of a protected property interest is the right to exclude others. That is one of the most essential sticks in the bundle of

rights that are commonly characterized as property." (quotations omitted)). On the other side, the Lifetime Lease Requirement minimally advances the government's interests, if at all. *See infra* III. (City fails to establish that it has a legitimate or compelling government interest). Here, the City could achieve its stated interests through far more effective means than seizing a handful[7] of privately owned condominiums. For example, the City could relax zoning requirements to allow building of lower income housing, or it could eliminate rent control.[8]

Whether the Lifetime Lease Requirement creates an unreasonable seizure of the Pakdels' property is a question for summary judgment or

---

[7] The Report asserts that the TIC real estate market was a relatively small part of the market. 2 ER 106.

[8] *See* Cal. SB-827 Planning and zoning: transit-rich housing bonus (Jan. 3, 2018); Henry Grabar, *California Bill Would Allow Unrestricted Housing by Transit, Solve State Housing Crisis*, Slate (Jan. 5, 2018), https://slate.com/business/2018/01/california-bill-sb827-residential-zoning-transit-awesome.html; Henry Hazlitt, *The Lesson Applied: What Rent Control Does*, http://steshaw.org/economics-in-one-lesson/chap18p1.html (last visited Apr. 20, 2018); Rebecca Diamond, et al., *The Effects of Rent Control Expansion on Tenants, Landlords, and Inequality: Evidence from San Francisco*, Cato Institute (Apr. 18, 2018), https://www.cato.org/publications/research-briefs-economic-policy/effects-rent-control-expansion-tenants-landlords?utm_source=Cato+Institute+Emails&utm_campaign=256f14b299-20180418_MironRB109&utm_medium=email&utm_term=0_395878584c-256f14b299-145057349&mc_cid=256f14b299&mc_eid=51810b2669.

trial. At this stage, it is enough that the Pakdels have adequately alleged an unreasonable seizure. *See Presley*, 464 F.3d at 489 ("Although she ultimately may not be able to prevail, Presley has at least raised a Fourth Amendment seizure claim . . . .").

C. The Pakdels did not freely and voluntarily consent to the seizure of their property.

Finally, the Pakdels did not freely and voluntarily consent to the transfer of their property by way of the lifetime lease agreement. In dismissing the Pakdels' seizure claim, the district court concluded that by applying for a conversion, the Pakdels voluntarily consented to the seizure of their property. 1 ER 11. But whether one consented to a waiver of his or her constitutional rights "cannot be taken literally to mean a 'knowing' choice." *Schneckloth v. Bustamonte*, 412 U.S. 218, 224 (1973). Instead, whether consent is freely given is a question of fact to be determined from the totality of the circumstances. *Id.* at 227. One of the factors to be considered is the "vulnerable subjective state of the person who consents." *Id.* at 229. Furthermore, the voluntariness of consent is informed "by the larger legal conceptions ordinarily characterized as rules of law but which, also, comprehend both induction from, and anticipation of, factual circumstances." *Culombe v. Connecticut*, 367 U.S.

568, 603 (1961) (determining whether a confession was voluntarily given).

Here, a preexisting agreement bound the Pakdels in this case to convert their TIC interest into condominiums. When they entered into the agreement, the Pakdels were well aware of the requirements under the lottery program for conversion. They considered those requirements upon purchase of their home and signing of the TIC Agreement. The Agreement bound them to undergo conversion as soon as possible and to comply with any requirements of that conversion. The requirements changed, however, when the City implemented the ECP.

When the City enacted the Lifetime Lease Requirement, it was aware that many people, like the Pakdels, had entered into binding agreements to undergo the TIC conversion process upon the first available opportunity. 2 ER 294-95. While the Pakdels and their co-tenants had tried to convert prior to the enactment of the Lifetime Lease Requirement, the City had not chosen them to win the conversion lottery. Thus, when the ECP began, the Agreement forced the Pakdels into conversion. The Pakdels had no right to change their obligations under

the Agreement. The Pakdels had no choice and did not freely volunteer to be subject to the Lifetime Lease Requirements of the ECP.

Thus, the City forced the Pakdels into a choice between breaching a contract or having their constitutional rights violated. The City and the district court believe that this choice constitutes a free and voluntary choice. *See* 1 ER 11. But the choice between two wrongs is not a choice and the City's actions coerced the Pakdels into waiving their constitutional rights against unreasonable seizures.[9]

Moreover, that the Pakdels may have been aware of the change in the City's ordinances does not mean they freely consented to a violation of their constitutional rights. *See Palazzolo v. Rhode Island*, 533 U.S. 606, 626-28 (2001). The government cannot restrict property owners from seeking relief from constitutional injuries merely because the City put those owners on notice that the rules are different. *Id.* at 627 ("The State may not put so potent a Hobbesian stick into the Lockean bundle."). This is especially true in cases, like here, where the property has not changed owners. *See id.* ("Nor does the justification of notice take into account the

[9] Further demonstrating the involuntariness of the conversion is that the Pakdels sought relief from the City and asked it to not enforce the Lifetime Lease Requirement but the City refused.

effect on owners at the time of enactment . . . ."). Therefore, the Pakdels have adequately alleged an unreasonable seizure under the Fourth Amendment.

III. The lower court erred when it dismissed the Pakdels' Substantive Due Process and Equal Protection claims for failure to show that the City violated their fundamental right to privacy in their home when it required them to issue a lifetime lease.

The Supreme Court has made clear that local government interference with property rights may implicate constitutional guarantees other than the just compensation clause of the Fifth Amendment. *Kelo*, 545 U.S. at 487 n.17 ("These types of takings may also implicate other constitutional guarantees."); *see Village of Willowbrook v. Olech*, 528 U.S. 562 (2000) (plaintiff asserted both a takings claim and an equal protection claim); *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. at 543 (comparing takings claims and due process claims). The allegation that a law violates one constitutional guarantee does not preclude allegations arising under other constitutional guarantees. *James Daniel Good Real Prop.*, 510 U.S. at 49 (taking and due process violation); *Soldal*, 506 U.S at 70 (due process and unreasonable seizure). Here, the Lifetime Lease Requirement not only violates the Takings Clause, it also violates both

the Due Process and Equal Protection Clauses of the Fourteenth Amendment because it infringes on the Pakdels' fundamental right to privacy in their own home.

A. The Pakdels properly alleged that the City violated their fundamental right to privacy under the U.S. and California Constitutions.

1. The right to privacy is a fundamental right.

The right to privacy is a fundamental right under both the U.S. and California Constitutions. *Griswold v. Conn.*, 381 U.S. 479 (1985); *Rattray v. City of National City*, 36 F.3d 1480, 1483-84 (9th Cir. 1994). When determining whether a fundamental right exists, the Court begins "by examining our Nation's history, legal traditions, and practices." *Washington v. Glucksberg*, 521 U.S. 702, 710 (1997). Fundamental rights and liberties are those rights, which are "deeply rooted in this Nation's history and tradition." *Id.* at 720-21 (quoting *Moore v. City of East Cleveland, Ohio*, 431 U.S. 494, 503 (1977)). And those rights which are "implicit in the concept of ordered liberty" such that "neither liberty nor justice would exist if they were sacrificed." *Id.* at 721 (quoting *Palko v. Connecticut*, 302 U.S. 319, 325-26 (1937)).

"[V]arious [constitutional] guarantees create zones of privacy." *Griswold*, 381 U.S. at 484 (finding that "specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance"). The Fourth Amendment itself assures the "right of the people to be secure in their persons, houses, papers, and effects." The Fourth and Fifth Amendments serve as protection against all governmental invasions "of the sanctity of a man's home and the privacies of life." *Boyd v. United States*, 116 U.S. 616, 630 (1886). A person's home is "a place that is traditionally protected most strongly by the constitutional right of privacy." *Tom v. City & Cty. of San Francisco*, 120 Cal. App. 4th 674, 686 (2004) (finding an autonomy privacy interest in choosing the persons with whom a person will reside and excluding others from one's private residence).

In this case, the Lifetime Lease Requirement forces the Pakdels to forfeit their right to privacy in their San Francisco home. The lifetime lease allows the tenant to remain in the home for the remainder of his life, whether or not the Pakdels want him to. Furthermore, the Lifetime

Lease Requirement opens the door for other people not already allowed in the Pakdels' home, to move in and occupy the home.[10]

The lower court found that the Pakdels had no fundamental right in the privacy of their home because they had opened it to a tenant already. This interpretation of the right to privacy is incorrect. A voluntary and temporary transfer of a possessory interest, through a leasehold that can be terminated, does not constitute a waiver of the right to object to a government seizure of that possessory interest. *See Palazzolo*, 533 U.S. at 626-28; Part II.C., *supra*.

In California, a lessee has a present possessory interest in the premises he rents, while the lessor has a future reversionary interest and retains fee title. *See California State Teachers' Retirement System v. County of Los Angeles*, 216 Cal. App. 4th 41 (2013). A leasehold is not an ownership interest, unlike the possession of land in fee simple. *Auerbach v. Assessment Appeals Bd. No. 1 for County of Los Angeles*, 137 P.3d 951 (Cal. 2006). Under the Ellis Act, no public entity may require a property owner to continue to offer accommodations in the property for rent or

[10] *See* Keeling & Anderson, *supra*; *see also* San Francisco Tenants Union, Roommates, https://www.sftu.org/roommates/ (last visited Apr. 20, 2018).

lease. Cal. Gov't Code § 7060. Practically, the Ellis Act allows property owners to repossess their units and remove them from the rental market. Under California law, a person does not waive their fundamental right to remove someone from his home just because he leased it to that person.

Here, the Pakdels have a fundamental right to privacy in their San Francisco apartment. That right entitles them to choose who can and cannot enter their home. Although they consented to having a tenant live in the apartment, that consent was not indefinite. Instead, the Pakdels and the tenant agreed to limitations on the use of their property, pursuant to the terms of the lease. The Lifetime Lease Requirement upsets this consent and the Pakdels' right to privacy. Instead of allowing the Pakdels to choose who can and cannot enter their home, the City has required that they allow certain individuals to live in their home for years.

Accordingly, the Pakdels have adequately alleged that the City has violated their fundamental right to privacy because it removed their fundamental right to choose who lives in their home by forcing them to offer their tenant a lifetime lease.

2. The City cannot justify its infringement on the Pakdels' right to privacy.

Classifications affecting fundamental rights under the U.S. Constitution are subject to strict scrutiny to determine whether they are precisely tailored to serve a compelling governmental interest. *Hoffman v. United States*, 767 F.2d 1431, 1435-36 (9th Cir. 1985); *Rattray*, 36 F.3d at 1483-84.

The City does not have a legitimate government interest, and thus it cannot have a compelling interest. To begin its analysis, the court must ask (1) whether the challenged legislation has a legitimate purpose and (2) whether it was reasonable for lawmakers to believe that the use of the classification would promote that purpose. *Western and Southern Life Ins. Co. v. State Bd. of Equalization of Cal.*, 451 U.S. 648, 668 (1981).

While it is true that courts should be careful when judging the wisdom or fairness of a legislative decision, "a bare . . . desire to harm a politically unpopular group cannot constitute a legitimate governmental interest." *U.S. Dep't of Agriculture v. Moreno*, 413 U.S. 528, 534 (1973). Furthermore, "[t]he [government] may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational." *City of Cleburne, Tex. v. Cleburne*

Living Center, 473 U.S. 432, 446 (1985); *see also, Zobel v. Williams*, 457 U.S. 55, 61-63 (1982); *Moreno*, 413 U.S. at 534.

San Francisco has a long history of targeting property owners, and specifically landlords. *See, e.g.*, *Levin v. City & County of San Francisco*, 71 F. Supp. 3d 1072 (N.D. Cal. 2014); *see also*, Matthew Renda, *Landlords Win Appeal in San Francisco Rental Market Fight*, Courthouse News Serv. (Apr. 11, 2018), https://www.courthousenews.com/landlords-win-appeal-in-san-francisco-rental-market-fight/. The City's Report highlights its purposeful discrimination against property owners. *See generally*, 2 ER 90-91. Instead of conducting an economic report with readily available real world data, the Report relied upon the opinions of City-selected experts. Nowhere in the Report is the lifetime lease mentioned or considered, thus, the costs of this indefinite and substantial burden was never considered. *See* 2 ER 90-91. Furthermore, the Report was severely limited because it assumed the units would be sold or refinanced upon conversion. Again, this assumption fails when the lifetime lease is imposed because the lifetime lease significantly decreases the value of the units and, in most cases, makes the units unmarketable.

The City justifies the lifetime lease based on the assumption that conversions will cause mass displacement of tenants. However, it failed to take into account displaced single unit owners who intended to return to their units. The Lifetime Lease Requirement was supposed to provide affordable housing for low and moderate-income households. However, the opposite is true. Many tenancy-in-common owners affected by the Lifetime Lease Requirement are single unit owners whose business is not renting. For example, as reported in the San Francisco Chronicle, those in need may actually be barred from returning to their own homes because of the Lifetime Lease Requirement. C.W. Nevius, *Law change means owners of Mission unit can't move back home*, San Francisco Chronicle (Feb. 4, 2015).[11]

Even if the City were to have a compelling reason in this case, the City cannot show that the Lifetime Lease Requirement is precisely tailored to serve that interest. The City never studied the impacts of a lifetime lease provision on the rental market or the parties that the

[11] *Available at* https://www.sfchronicle.com/bayarea/nevius/article/Law-change-means-owners-of-Mission-unit-can-t-60b3073.php.

Lifetime Lease Requirement would impact. Furthermore, it has not proved that the Lifetime Lease Requirement actually achieves a purpose.

At a minimum, the Pakdels should have been given the opportunity to refute the City's report. If the district court accepted all the allegations in the Pakdels' complaint as true, as it is required to do at the motion to dismiss stage, then the only logical conclusion is that the Lifetime Lease Requirement does not survive strict scrutiny. In fact, even if a lower standard of review applies, the allegations are sufficient to defeat a motion for failure to state a claim. *See Borden's Farm Prod. Co. v. Baldwin*, 293 U.S. 194, 209 (1934) (rational basis test is "a rebuttable presumption. It is not a conclusive presumption, or a rule of law which makes legislative action invulnerable to constitutional assault" (citations omitted)). Accordingly, this Court should vacate the judgment of the district court and remand for further proceedings.

B. The Pakdels adequately alleged an equal protection claim.

Government deprivations of real property may implicate constitutional guarantees, such as the equal protection clause of the Fourteenth Amendment. *Kelo*, 545 U.S. at 487 n.17 (citing *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000)). The right to privacy is a

fundamental right under the U.S. and California Constitutions. *See supra*.

Even if strict scrutiny is not applicable, the City has still violated the Pakdels' equal protection rights because limiting their right to occupy their home is not a legitimate government interest for purposes of rational basis review.

The Lifetime Lease Requirement treats TIC owners differently by drawing a distinction between owners who have tenants versus owners who do not have tenants. Recognizing that requiring any owner who would like to convert their TIC interest to surrender their Ellis Act rights would be illegitimate, the Lifetime Lease Requirement instead enforces a Lifetime Lease Requirement against TIC owners who have been generous enough to rent their places to a tenant.

Prior to the enactment of the Lifetime Lease Requirement, citizens of California had a right to rent their homes, and subsequently withdraw them from the rental market to reoccupy them, subject to certain qualifications, under the Ellis Act. However, after enactment of the Lifetime Lease Requirement, property owners like the Pakdels no longer have Ellis Act rights. This was the purpose of the City's enactment of the

Lifetime Lease Requirement, to limit Pakdels' right to use the Ellis Act to go out of the rental business. *See* 2 ER 294-96; *cf.*, *Tom*, 120 Cal. App. 4th at 686-87 ("We note, however, that the City does maintain in other related contexts that it had an interest in enacting the ordinance in order to preserve rental housing, by limiting the right of homeowners under the Ellis Act . . . .").

Providing more rental housing in the abstract may be a laudable goal, but the City has no strong contravening interest in enacting an ordinance that is legally forbidden to it under state law. *Id.* at 687. The City has illegally burdened one group, as opposed to another similarly situated group, by means of a classification that does not promote its stated purpose. As such, the City has violated the Equal Protection Clause.

C. The Pakdels adequately alleged a substantive due process claim.

A regulation of private property "that fails to serve any legitimate governmental objective may also be so arbitrary or irrational that it runs afoul of the Due Process Clause." *Lingle*, 544 U.S. at 542. Substantive due process bars certain government actions that advance oppression, regardless of the fairness of the procedures used to implement them.

Brown v. Montoya, 662 F.3d 1152 (10th Cir. 2011). The rights that substantive due process protects are rights associated with autonomy of self, including privacy. *See Glucksberg*, 521 U.S. at 719-20. A law that infringes upon a fundamental right is subject to strict scrutiny. *Reno v. Flores*, 507 U.S. 292, 302 (1993). Under strict scrutiny, courts will presume that a law is void unless the government can prove that the infringement is necessary to achieve a compelling government objective.

Here, the Lifetime Lease Requirement infringes on the Pakdels' right to privacy because it forces them to give up the right to determine who may live in their home. *See supra* III.A.1. The City has failed to advance a compelling reason that would justify the Lifetime Lease Requirement withstanding strict scrutiny. *See supra.* III.A.2. Furthermore, even if strict scrutiny did not apply, the Lifetime Lease Requirement fails to substantially advance a government interest.

Even if the court finds there is no fundamental right, the Pakdels can still prevail. In deciding substantive due process cases involving land use, the court should look to whether the action is arbitrary or irrational. *See Village of Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252 (1977); *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365

(1926); *Nectow v. City of Cambridge*, 277 U.S. 183 (1928). Deliberate decisions of government officials to deprive a person of life, liberty, or property, when no governmental interest is substantially advanced, results in a violation of substantive due process. *Lingle*, 544 U.S. at 549 (Kennedy, J., concurring). Here, the Pakdels have alleged that the City deliberately chose to single out people in their situation to disadvantage them and remove their Ellis Act rights. The Lifetime Lease Requirement takes away a legislatively recognized right to quit the rental business and reoccupy your own home.

The Pakdels properly allege that the Lifetime Lease Requirement does not substantially advance a government interest because the City never studied or justified the effects of a Lifetime Lease Requirement. As explained above, the City's relied-upon report does not economically justify the Lifetime Lease Requirement, nor did the City ever study the actual effects of the requirement. *See supra* III.A.2.

Therefore, the Pakdels have properly alleged a due process claim.

CONCLUSION

For the reasons stated above, the district court's dismissal of the complaint should be reversed, and the case remanded to the district court for further proceedings.

DATED: April 27, 2018.

Respectfully submitted,

PAUL F. UTRECHT
THOMAS W. CONNORS
JAMES S. BURLING
JEFFREY W. McCOY
KAYCEE M. ROYER

s/ Kaycee M. Royer
KAYCEE M. ROYER

Attorneys for Plaintiffs – Appellants

STATEMENT OF RELATED CASES

Plaintiffs–Appellants are aware of no related cases within the meaning of Circuit Rule 28-2.6.

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

1. This document complies with the type-volume limit of Fed. R. App. P. 32(a)(7)(B) and 9th Cir. R. 32-1, excluding the parts of the document exempted by Fed. R. App. P. 32(f):

[X] this document contains 9,106 words, **or**

[ ] this brief uses a monospaced typeface and contains _____ lines of text.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because:

[X] this document has been prepared in a proportionally spaced typeface using Word 2013 in Century Schoolbook, 14 point font, **or**

[ ] this document has been prepared in a monospaced typeface using [*state name and version of word-processing program*] with [*state number of characters per inch and name of type*].

DATED: April 27, 2018.

s/ Kaycee M. Royer
KAYCEE M. ROYER

CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2018, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Kaycee M. Royer
KAYCEE M. ROYER

ADDENDUM
TABLE OF CONTENTS

U.S. Const. amend. IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such

State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

FILE NO. 120669 AMENDED IN BOARD 6/11/2013 ORDINANCE NO. 117-13

[Subdivision Code - Condominium Conversion ~~Impact~~ Fee]

Ordinance amending the Subdivision Code, by adding Section 1396.4, to adopt a condominium conversion ~~impact~~ fee applicable to certain buildings ~~qualifying for participating but not being selected or participating in the 2013 or 2012 condominium conversion lottery only~~ that would be permitted to convert during a ~~six~~seven year period, and subject to specified requirements, including lifetime leases for non-purchasing tenants; adding Section 1396.5, to suspend the annual condominium conversion lottery until 2024 and resume said lottery under specified circumstances tied to permanently affordable rental housing production; amending Section 1396, to restrict future condominium lotteries to buildings of no more than four units with a specified number of owner occupied units for three years prior to the lottery and provide an exception for certain five- and six-unit buildings to participate in the lottery; and adopting environmental findings.

NOTE: Additions are *single-underline italics Times New Roman*; deletions are *~~strike-through italics Times New Roman~~*. Board amendment additions are double-underlined; Board amendment deletions are ~~strikethrough normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Findings. (a) The Planning Department has determined that the actions contemplated in this Ordinance are in compliance with the California Environmental Quality Act (California Public Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 120669 and is incorporated herein by reference.

Supervisors Chiu, Kim, Yee, Campos
BOARD OF SUPERVISORS

(b) This Board finds that the condominium conversion ~~impact~~ fee as set forth in this legislation is an appropriate charge imposed as a condition of property development, which in this case is the City's approval of a condominium conversion subdivision, a discretionary development approval pursuant to the San Francisco Subdivision Code and the California Subdivision Map Act. Based on data, information, and analysis in a Condominium Conversion Nexus Analysis report prepared by Keyser Marston Associates, Inc., dated January 2011, and the findings of Planning Code Section 415.1 concerning the City's inclusionary affordable housing program, this Board finds and determines that there is ample evidentiary support to charge the ~~impact~~ fee set forth herein as it relates to a subdivision map approval that allows the conversion of existing dwelling units into condominiums. Said ~~impact fee~~charge also is lower than the fee amount supported in the abovementioned Nexus Analysis report. As a consequence the Board finds that the amount of this charge is no more than necessary to cover the reasonable costs of the governmental activity and programs related to condominium conversion. The Board further finds and determines, that based on this evidence, the manner in which ~~these fees are~~this charge is allocated and assessed on a per unit cost for each unit converted to a condominium bears a reasonable relationship to the subdivision applicants' burdens on the City that result from the change in use and ownership status from a dwelling unit within an unsubdivided property to a separate interest in a condominium unit. A copy of the report on the ~~fees~~charge identified herein is in Clerk of the Board of Supervisors File No. 120669 and is incorporated herein by reference. The City Controller's Office has independently confirmed that the fee amounts identified in said report remain valid. This determination is on file with the Clerk of the Board of Supervisors File No. 120669 and is incorporated herein by reference.

(c)(1) The Board further finds that the present backlog of existing applications for condominium conversion under the existing 200-unit annual condominium conversion lottery

process in Subdivision Code Article 9 (Conversions) extends well over a decade. Indicative of this backlog, approximately 700 tenancy-in-common (TIC) and other owner-occupied buildings, containing 2,269 dwelling units, registered for the 2013 lottery condominium conversion lottery in an effort to be selected for the 200 units that were available. The proposed expedited approval process for condominium conversions (the "Expedited Conversion program") is intended as a one time adjustment to the backlog in applications for conversions given the specific needs of existing owners of tenancy-in-common units. Therefore, the eExpedited cConversion program set forth in this legislation's proposed Section 1396.4 is intended as the exclusive method for allocating approvals for conversions of apartments and tenancy-in-common buildings into condominiums for the entire period that is established in the proposed Section 1396.5.

(2) The Expedited Conversion program that this Ordinance creates will bring significant economic value to owners who utilize it. According to the City Controller's April 2, 2013 Economic Impact Report, condominium conversion "creates clear financial advantages for owners of tenancies-in-common (TIC) buildings." In addition to the estimated 15% premium gained by converting a TIC to a condominium, as projected in the Keyser Marston Associates 2011 Nexus Analysis, the Controller's report notes that because State law does not otherwise allow rent limitations on condominiums after the subdivider sells them, future owners of these converted condominiums after the rental limitation period terminates "have the opportunity for greater rental income than owners of TIC units, the vast majority of which are subject to rent control."

(3) Due to the present backlog of existing applications, the Office of the Controller estimates that owners of 1,730 of the units not selected in the 2013 lottery would pay the ~~impact fee~~condominium conversion charge and avail themselves of the seven-year eExpedited cConversion program. The program also permits TICs that did not enter the 2012

and 2013 lottery to convert, which could result in more than 1,730 dwelling units taking advantage of the eExpedited eConversion program. The number of conversions is therefore anticipated to be well in excess of the 200 unit per year allotment in the existing lottery. The Ordinance balances the number of units converted under this program in a relatively short period of time by suspending the lottery until the City's affordable housing production replaces the number of units converted under the eExpedited eConversion program. The maximum number of years of suspension of the lottery will be the number of converted units divided by 200. Therefore, under the suspension, there will be no net loss of the number of converted units over time as compared to the existing lottery. Conversions of apartments to condominiums also results in the eviction of existing tenants in the converted buildings because many tenants cannot afford to purchase their units. A large number of conversions under the eExpedited eConversion program would magnify this impact and result in a large number of tenants evicted into a very expensive rental housing market. The Office of the Controller estimates that tenants of these converted properties would likely spend between $0.8 and $1.1 million annually in higher rent alone due to displacement and/or rent decontrol. Therefore, the Ordinance balances this impact on existing tenants and the effects of tenant displacement on the City in general by requiring that applicants for the Expedited Conversion program offer existing tenants a lifetime lease. The abovementioned Controller's report is on file with the Clerk of the Board of Supervisors in File No. 120669 and is incorporated herein by reference.

~~(3)~~(4) In addition, this legislation attempts to integrate this process with the adoption of additional controls on future conversions. This legislation does not intend to affect in any way the conversion of 100% owner-occupied two-unit buildings in accordance with the terms of Subdivision Code Section 1359.

(d) As set forth in the Housing Element of the General Plan, in particular Objective 3, it is the City's policy to preserve the existing supply of rent controlled housing and to increase the production of new affordable rental units. Policy 3.1 states that is the City's policy to "[p]reserve rental units, especially rent controlled units, to meet the City's affordable housing needs." Policy 4.4 states it is the City's policy to "[e]ncourage sufficient and suitable rental housing opportunities, emphasizing permanently affordable rental units wherever possible." And, Policy 9.2 provides that it is city policy to "[c]ontinue prioritization of preservation of existing affordable housing as the most effective means of providing affordable housing." Therefore, the conversion of rental housing into condominiums, without replacement, results in the loss of existing rent controlled housing contrary to public policy.

(e) In 2012, the voters of the City of San Francisco approved Proposition C that proposed in part to fund and produce ~~9~~30,000 affordable rental housing units over thirty years, establishing an annual baseline production of approximately 300 net new affordable housing units. The Board determines that this legislation is compatible with the goals of Proposition C and resumption of the condominium conversion lottery is properly benchmarked in relationship to new affordable housing production as contemplated in Proposition C. Further, the Board finds that Proposition C's limitations on new affordable housing fees were intended to apply to fees on new residential construction projects and not to the condominium conversion charges set forth in this Ordinance which would be imposed only on existing residential buildings that obtain a condominium subdivision and involve no net increase in new housing units.

(f) It is the further intent of this legislation to suspend future conversions of rental housing pending the one for one replacement of units converted through the e~~E~~xpedited e~~C~~onversion program beyond the City's net new annual baseline production and to provide additional protections to tenants in buildings to be converted as specified above.

(g) The Board finds that the rate of TIC creation and demand for condominium conversions to date has far exceeded the rate of allowable conversions under existing law. The Board also finds that the unsustainable growth of the TIC form of ownership poses challenges and adverse consequences for which many consumers are unprepared and that those challenges are greater for larger building sizes. However, increasing the number of allowable conversions would impose a burden on the City's capacity to develop sufficient replacement rental housing units and to assist displaced tenants. Therefore, it is the intent of this legislation to re-establish the condominium lottery conversion process on a more sustainable basis following the restart of the lottery and to encourage long-term ownership in smaller buildings.

Section 2. The San Francisco Subdivision Code is hereby amended by adding Sections 1396.4 and 1396.5, to read as follows:

SEC. 1396.4. CONDOMINIUM CONVERSION ~~IMPACT~~ *FEE* AND EXPEDITED CONVERSION PROGRAM.

(a) Findings. The findings of Planning Code Section 415.1 concerning the City's inclusionary affordable housing program are incorporated herein by reference and support the basis for charging the fee set forth herein as it relates to the conversion of dwelling units into condominiums.

(b) Any building ~~that: (1) participated in the 2013 or 2012 condominium conversion lottery, but was not selected for conversion or (2) could have participated in the 2013 condominium conversion lottery, but elected not to do so~~, *may* ~~bypass~~ be exempted from *the* annual lottery *provisions of Section 1396* ~~(the annual lottery conversion limitation)~~ *if the building owners for said building comply with Section 1396.3(g)(1) and* ~~pay the condominium conversion impact fee subject to the~~ all the *requirements of this Section* 1396.4. ~~In addition~~Notwithstanding the foregoing, no property or applicant subject to any of the prohibition on conversions set forth in Section 1396.2~~(c)~~, in particular a property with the eviction(s) set forth in Section

1396.2(b), is eligible for ~~said bypass~~ the eExpedited eConversion ~~process~~program under this Section 1396.4. Eligible buildings as set forth in this Section (b) may exercise their option to participate in this ~~fee~~ program according to the following requirements:

~~(c) Eligible buildings as set forth in Subsection (b) may exercise their option to participate in this fee program according to the following requirements:~~

~~(1) The applicant(s) for the subject building shall pay the fee specified in Subsection (e) no later than January 24, 2014 for the entire building.~~

~~(2) No later than the last business day before July 25, 2014:~~

~~(i) DPW shall determined that the applicant's condominium conversion subdivision application is complete, or~~

~~(ii) The application is deemed complete by operation of law.~~

~~(3) The applicant shall obtain final and effective tentative approval of the condominium subdivision or parcel map no later than December 31, 2014.~~

~~(4) Any map application subject to a required public hearing on the subdivision or a subdivision appeal shall have the time limit set forth in Subsection (c)(3) suspended until March 13, 2015.~~

~~(5) The Director of the Department of Public Works is authorized to waive the time limit set forth in Subsection (c)(3) as it applies to a particular building due to extenuating or unique circumstances. Such waiver may be granted only after a public hearing and in no case shall the time limit extend beyond July 24, 2015.~~

(1) Any building that participated in but was not selected for the 2012 or 2013 condominium conversion lottery consisting of (a) four units or less in which one unit has been ~~continuously~~ occupied continuously by one of the applicant owners of record for no less than five years prior to April 15, 2013, or (b) buildings consisting of five or six units in which 50 percent or more of the units have been ~~continuously~~ occupied continuously by the applicant

owners of record for no less than five years as of April 15, 2013, is eligible for conversion under this Subsection. The applicant(s) for the subject building seeking to convert under this Subsection shall pay the fee specified in Subsection (e) no later than ~~January 24~~April 14, 2014 for the entire building along with additional information as the Department may require including certification of continued eligibility; however, the deadline for an applicant to pay the fee may be extended pursuant to (j)(3) of this Section.

(2) Any building that participated in but was not selected for the 2012 or 2013 condominium conversion lottery consisting of (a) four units or less in which one unit has been ~~continuously~~ occupied continuously by one of the applicant owners of record for no less than three years prior to April 15, 2014, or (b) buildings consisting of five or six units in which 50 percent or more of the units have been ~~continuously~~ occupied continuously by the applicant owners of record for no less than three years as of April 15, 2014, is eligible for conversion under this Subsection. The applicant(s) for the subject building may apply for conversion under this Subsection on or after April 15, 2014 and shall pay the fee specified in Subsection (e) no later than January 23, 2015 along with additional information as the Department may require including certification of continued eligibility; however, the deadline for an applicant to pay the fee may be extended pursuant to (j)(3) of this Section.

(3) For Additionally Qualified Buildings consisting of (a) four units or less in which one unit has been ~~continuously~~ occupied continuously by one ~~of the applicant~~ owner~~s~~ of record for no less than six years as of April 15, 2015 or (b) buildings consisting of five or six units in which 50 percent or more of the units have been ~~continuously~~ occupied continuously by ~~the applicant~~ owners of record for no less than six years as of April 15, 2015, the applicant(s) for the subject building may apply for conversion under this Subsection on or after April 15, 2015 and shall pay the fee specified in Subsection (e) no later than January 22, 2016 along with

additional information as the Department may require including certification of continued eligibility.

(4) For Additionally Qualified Buildings consisting of (a) four units or less in which one unit has been ~~continuously~~ occupied continuously by one ~~of the applicant~~ owner~~s~~ of record for no less than six years as of April 15, 2016, or (b) buildings consisting of five or six units in which 50 percent or more of the units have been ~~continuously~~ occupied continuously by ~~the applicant~~ owners of record for no less than six years as of April 15, 2016, the applicant(s) for the subject building may apply for conversion under this Subsection on or after April 15, 2016 and shall pay the fee specified in Subsection (e) no later than January 20, 2017 along with additional information as the Department may require including certification of continued eligibility.

(5) For Additionally Qualified Buildings consisting of (a) four units or less in which one unit has been ~~continuously~~ occupied continuously by one ~~of the applicant~~ owner~~s~~ of record for no less than six years as of April 15, 2017, or (b) buildings consisting of five or six units in which 50 percent or more of the units have been ~~continuously~~ occupied continuously by ~~the applicant~~ owners of record for no less than six years as of April 15, 2017, the applicant(s) for the subject building may apply for conversion under this Subsection on or after April 15, 2017 and shall pay the fee specified in Subsection (e) no later than January 19, 2018 along with additional information as the Department may require including certification of continued eligibility.

(6) For Additionally Qualified Buildings consisting of (a) four units or less in which one unit has been ~~continuously~~ occupied continuously by one ~~of the applicant~~ owner~~s~~ of record for no less than six years prior to April 15, 2018, or (b) buildings consisting of five or six units in which 50 percent or more of the units have been ~~continuously~~ occupied continuously by ~~the applicant~~ owners of record for no less than six years as of April 15, 2018, the applicant(s) for

the subject building may apply for conversion under this Subsection on or after April 15, 2018 and shall pay the fee specified in Subsection (e) no later than January 25, 2019 along with additional information as the Department may require including certification of continued eligibility.

(7) For Additionally Qualified Buildings consisting of (a) four units or less in which one unit has been occupied continuously by one owner of record for no less than six years prior to April 15, 2019, or (b) buildings consisting of five or six units in which 50 percent or more of the units have been occupied continuously by owners of record for no less than six years as of April 15, 2019, the applicant(s) for the subject building may apply for conversion under this Subsection on or after April 15, 2019 and shall pay the fee specified in Subsection (e) no later than January 24, 2020 along with additional information as the Department may require including certification of continued eligibility. An Additionally Qualified Building subject to Subsection 9(A) shall be eligible to convert pursuant to this Subsection as long as there is fully executed written agreement in which the owners each have an exclusive right of occupancy to individual units in the building to the exclusion of the owners of the other units and 50 percent or more of the units have been occupied continuously by owners of record for no less than six years as of January 24, 2020.

(8) For applications for conversion pursuant to Subsections (3)-(7) only, a unit that is "occupied continuously" shall be defined as a unit occupied continuously by an owner of record for the six year period without an interruption of occupancy and so long as the applicant owner(s) occupied the subject unit as his/her principal place of residence for no less than one year prior to the time of application. Notwithstanding the occupancy requirements set forth above, each building may have one unit where there is an interruption in occupancy for no more than a three month period that is incident to the sale or transfer to a subsequent owner of record who occupied the same unit. For any unit with an interruption of occupancy,

the applicant shall provide evidence to establish to the satisfaction of the Department that the period did not exceed three months.

(9) An "Additionally Qualified Building" within the meaning of this Section is defined as a building in which the initially eligible applicant owners of record have a fully executed written agreement as of April 15, 2013 in which the owners each have an exclusive right of occupancy to individual units in the building to the exclusion of the owners of the other units; provided, however, that said agreement can be amended to include new applicant owner(s) of record as long as the new owner(s) satisfy the requirements of Subsection (8) above. In addition to the requirements listed in this Subsection (8), an Additionally Qualified Building also includes a five or six unit building that: (A) on April 15, 2013, had 50 percent or more of the units in escrow for sale as a tenancy-in-common where each buyer shall have an exclusive right of occupancy to an individual unit in the building to the exclusion of the owners of other units or (B) is subject to the requirements of Section 1396.2(f) and 50 percent or more of the units have been occupied continuously by owners of record for no less than ten years prior to the date of application as set forth in Subsections (3)-(7).

~~(6) (7) (8)~~(10) ~~The~~ In addition to all other provisions of this Section, the applicant(s) must meet the following requirements applicable to Subdivision Code Article 9, Conversions: Sections 1381, 1382, 1383, 1386, 1387, 1388, 1389, 1390, 1391(a) and (b),1392, 1393, 1394, and 1395. ~~In addition~~Also, the applicant(s) must certify that to the extent any tenant vacates his or her unit after March 31, 2013 and before recordation of the final parcel or subdivision map, such tenant did so voluntarily or if an eviction or eviction notice occurred it was not pursuant to Administrative Code Sections 37.9(a)(8)-(14). If an eviction has taken placed under 37.9(a)(11) or 37.9(a)(14) then the applicant(s) shall certify that the original tenant reoccupied the unit after the temporary eviction.

(11) If the Department finds that a violation of this Section occurred prior to recordation of the final map or final parcel map, the Department shall disapprove the application or subject map. If the Department finds that a violation of this Section occurred after recordation of the final map or parcel map, the Department shall take such actions as are available and within its authority to address the violation.

(c) Decisions and Hearing on the Application.

(1) The applicant shall obtain a final and effective tentative map or tentative parcel map approval for the condominium subdivision or parcel map within one (1) year of paying the fee specified in Subsection (e).

(2) No less than twenty (20) days prior to the Department's proposed decision on a tentative map or tentative parcel map, the Department shall publish the addresses of building being considered for approval and post such information on its website. During this time, any interested party may file a written objection to an application and submit information to ~~DPW~~the Department contesting the eligibility of a building. In addition, the Department may elect to hold a public hearing on said tentative map or tentative parcel map to consider the information presented by the public, other City department, or an applicant. If the Department elects to hold such a hearing it shall post notice of such hearing and provide written notice to the applicant, all tenants of such building, any member of the public who submitted information to the Department, and any interested party who has requested such notice. In the event that an objection to the conversion application is filed in accordance with this Subsection, and based upon all the facts available to the Department, the Department shall approve, conditionally approve, or disapprove an application and state the reasons in support of that decision.

(3) Any map application subject to a Departmental public hearing on the subdivision or a subdivision appeal shall have the time limit set forth in this Subsection (c)(1) extended for another six (6) months.

(4) The Director of the Department of Public Works is authorized to waive the time limits set forth in this Subsection (c)(1) as it applies to a particular building due to extenuating or unique circumstances. Such waiver may be granted only after a public hearing and in no case shall the time limit extend beyond two (2) years after submission of the application.

(d) Should the subdivision application be denied or be rejected as untimely in accordance with the dates specified above, or the tentative subdivision map or tentative parcel map disapproved, ~~DPW~~ the City *shall refund the entirety of the applicant's fee specified in Subsection (e).*

(e) The fee amount is $20,000.00 per unit for all buildings that ~~participated in the lottery for the first time in 2013 or~~ seek to convert under Subsection (b)(1)-~~(6)~~(7). Said fee shall be adjusted annually in accordance with the terms of Section 1315(f). *Said fee is reduced for each year the building has participated in the condominium conversion lottery up to and including the 2013 lottery in accordance with the following formula:*

(1) 2 years of participation, 20% fee reduction per unit;

(2) 3 years of participation, 40% fee reduction per unit;

(3) 4 years of participation, 60% fee reduction per unit; and

(4) 5 or more years of participation, 80% fee reduction per unit.

(f) For purposes of Section (e), a building's owner(s) *shall get credit only for those years that* ~~it~~ he or she *participated in the lottery even though such building could have qualified for and participated in other condominium conversion lotteries.*

(g) Life Time Lease for Non-purchasing Tenants.

(1) ~~No subdivider or subsequent condominium unit owner shall refuse to renew a lease or extend a rental agreement to any~~Any application for conversion under this Section shall

include a certification under penalty of perjury by the applicants that ~~all~~any *non-purchasing tenant*(s) in the building ~~have been offerred~~has been given a written offer to enter into a life time lease in the form and with the provisions published and prescribed by ~~DPW~~the Department in consultation with the Rent Board. Such written offer for a life time lease shall be executed by the owners of the building(s) and recorded prior to ~~at~~ *the time of Final Map or Parcel Map approval.* ~~Any extended~~ Any life time *leases* ~~or rental agreements~~ *made pursuant hereto shall expire only upon the death or demise of* the last *such* life-*tenant* residing in the unit *or the last surviving member of the* life-*tenant's household, provided such surviving member is related to the* life- *tenant by blood, marriage, or domestic partnership, and is* either disabled, catastrophically ill, or *aged 62 or older at the time of death or demise of* any *such* life-*tenant, or at such time as the* life-*tenant*(s) in the unit *voluntarily vacates the unit after giving due notice of such intent to vacate.*

(2) (A) *Each lease shall contain a provision allowing the tenant to terminate the lease and vacate the unit upon 30 days' notice.* ~~Rent~~ and a provision that rent *charged during the term of* ~~any extended~~the *lease* ~~or rental agreement pursuant to the provisions of this Section~~ *shall not exceed the rent charged at the time of filing of the application for conversion, plus any increases proportionate to the increases in the residential rent component of the "Bay Area Cost of Living Index, U.S. Dept. of Labor," provided that the rental increase provisions of this Section shall be operative only in the absence of other applicable rent increase or arbitration laws.* ~~This Section~~

(B) The lease also *shall* state that it 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,* 1941.3, and 1941.4 *of the California Civil Code.* ~~There~~ and that there *shall be no decrease in dwelling unit maintenance or other services historically provided to such units and such* life-*tenants.* ~~A binding and recorded agreement The provision of a lifetime lease pursuant to this Subsection shall be a condition imposed on each tentative parcel or tentative subdivision map subject to this~~

~~Subsection 1396.4(g). Binding and recorded agreements between the tenant(s) and the property owner(s) and between the City and the property owner(s) concerning this requirement shall be a tentative map condition imposed on each parcel or subdivision map subject to this Subsection 1396.4(g).~~

(C) The lease shall ~~also~~ include the following language:

Tenant agrees that this Lease shall be subject and subordinate at all times to (i) all ground leases or underlying leases that may now exist or hereafter be executed affecting the Real Property or any portion thereof; (ii) the lien of any mortgage, deed of trust, assignment of rents and leases or other security instrument (and any advances thereunder) that may now exist or hereafter be executed in any amount for which the Real Property or any portion thereof, any ground leases or underlying leases or Landlord's interest or estate therein, is specified as security; and (iii) all modifications, renewals, supplements, consolidations and replacements thereof, provided in all cases the mortgagees or beneficiaries named in mortgages or deeds of trust hereafter executed or the assignee of any assignment of rents and leases hereafter executed to recognize the interest and not disturb the possession, use and enjoyment of Tenant under this Lease, and, in the event of foreclosure or default, the lease will continue in full force and effect by operation of San Francisco Administrative Code Chapter 37, Section 37.9D, and the conditions imposed on each parcel or subdivision map pursuant to Section 1396.4(g), as long as Tenant is not in default under the terms and conditions of this Lease. Tenant agrees to execute and deliver, upon demand by Landlord and in the form requested by Landlord, any additional reasonable documents evidencing the priority or subordination of this Lease with respect to any such ground leases, underlying leases, mortgages, deeds of trust, assignment of rents and leases or other security instruments. Subject to the foregoing, Tenant agrees that Tenant shall be bound by, and

required to comply with, the provisions of any assignment of rents and leases with respect to the Building.

(3) The Department shall impose the following tentative map conditions on each parcel and subdivision map subject to this Subsection 1396.4(g) and require that the conditions be satisfied prior to Final Subdivision Map or Parcel Map approval: (A) the property owner(s) of the building provide a written offer for a life time lease pursuant to this Subsection to the tenant(s) in the building and record such offer against the building's title, (B) at the time the tenant(s) accepts the life time lease offer, and even if such acceptance occurs after map approval, a binding agreement between the tenant(s) and the property owner(s) shall be executed and recorded against the property's title, and (C) a binding agreement between the City and the property owner(s) concerning the requirements of this Subsection be recorded against the property's title. For purposes of this Subsection, the Board of Supervisors delegates authority to the DPW Director, in consultation with the Mayor's Office of Housing, to enter in said agreement on behalf of the City and County of San Francisco.

~~(2)~~(4) If the owner(s) of a building subject to the life time lease provisions of this Section 1396.4(g) enters into any contract or option to sell or transfer any unit that would be subject to the lifetime lease requirements or any interest in any unit in the building that would be subject to the lifetime lease requirements at any time between the initial application and recording of the final subdivision map or parcel map, said contract or option shall be subject to the following conditions: (a) the contract or option shall include written notice that the unit shall be subject to the life time lease requirements of Subdivision Code Section 1396.4(g), (b) prior to final execution of any such contract or option, the owner(s) shall record a notice of restrictions against the property that specifically identifies the unit potentially subject to the life time lease requirements and specifies the requirements of the life time lease as set forth in Section 1396.4(g)(1), and (c) the recorded notice of restrictions shall be included as a note on

the final subdivision map or parcel map. Prior to approval of a final subdivision map or parcel map, the applicant(s) shall certify under penalty of perjury to the Department that he, she, or they have complied with the terms of this Subsection as it applies to a building. Failure to provide this certification from every current owner of a building shall result in disapproval of the map. The content of the notices and certifications required by this Subsection shall comply with the instructions and procedures developed by the Department.

(h) In recognition of the rental requirements of Section (g), the fee for each unit in which a non-purchasing tenant resides at the time specified in Section (g) who is offered a life time lease and is unrelated by blood, marriage, or domestic partnership to any owner of the building *shall be refunded to the subdivider under the following formula:*

(1) One unit, 10% fee reduction for such unit;

(2) Two units, 20% fee reduction for each unit;

(3) Three units, 30% fee reduction for each unit.

(i) Upon confirmation of compliance with the rental requirement, DPW or the City department in possession of the fee revenue *shall refund the amount specified in Section (h) to the subdivider and have all remaining fee revenues transferred,* in the following percentage allocations: 25% *to the* ~~Citywide Affordable Housing Fund Mayor's Office Home Ownership Assistance Loan Fund City's Housing Stabilization~~Mayor's Office of Housing's program for small site acquisition to purchase market rate housing and convert it to affordable housing and 75% to the Citywide Affordable Housing Fund for the purpose of ~~creating or preserving~~ expanding affordable housing opportunities for ~~affordable to~~ low or moderate income households in San Francisco, including, but not limited to, expanding public housing opportunities.

(j) Waiver or reduction of fee based on absence of reasonable relationship or deferred payment based upon limited means.

(1) A project applicant of any project subject to the requirements in this Section may appeal to the Board of Supervisors for a reduction, adjustment, or waiver of the requirements based upon the absence of any reasonable relationship or nexus between the impact of development and the amount of the fee charged or for the reasons set forth in Subsection (2) below, a project applicant may request a waiver from the Board of Supervisors.

(2) Any appeal of ~~waiver~~ *requests under this clause shall be made in writing and filed with the Clerk of the Board no later than 15 days after the date the sponsor is required to pay and has paid to the Treasurer the fee as required in this Section. The appeal shall set forth in detail the factual and legal basis for the claim of waiver, reduction, or adjustment. The Board of Supervisors shall consider the appeal at the hearing within 60 days after the filing of the appeal. The appellant shall bear the burden of presenting substantial evidence to support the appeal, including comparable technical information to support appellant's position. If a reduction, adjustment, or waiver is granted, any change of use or scope of the project shall invalidate the waiver, adjustment or reduction of the fee. If the Board grants a reduction, adjustment or waiver, the Clerk of the Board shall promptly transmit the nature and extent of the reduction, adjustment or waiver to the Treasurer and Department of Public Works.*

(3) A project applicant may apply to the Department of Public Works for a deferral of payment of the fee described in Subsection (e) for the period that the Department completes its review and until the application for expedited conversion is approved, provided that ~~the applicant satisfies each of the following requirements: (i) the applicant resided in his or her unit in the subject property as his or her principle place of residence for not less than three years and (ii) that~~ for the twelve months prior to the application, the applicant resided in his or her unit in the subject property as his or her principle place of residence and the applicant's household income was less than 120% of median income of the City and County of San Francisco as determined by the Mayor's office of Housing.

~~*(k)* Any building that participates in the fee program set forth herein shall automatically be ineligible to participate in the 2014 condominium conversion lottery. DPW The City shall refund to the applicant any fees paid to participate in the 2014 lottery and shall remove any lottery tickets associated with the subject building from the lottery drawing.~~

~~(l)~~ *Buildings that convert pursuant to this Section shall have no effect on the terms and conditions of Section 1341A, 1385A, or 1396 of this Code.*

SEC. 1396.5. SUSPENSION OF THE LOTTERY PENDING PRODUCTION OF REPLACEMENT UNITS FOR EXPEDITED CONVERSION UNITS.

(a) Within twelve months after issuing tentative or tentative parcel map approval for the last conversion under Section 1396.4 or December 29, 2023, whichever is earlier, the Department shall publish a report stating the total number of units converted under the Expedited Conversion program and every twelve months thereafter until the Expedited Conversion program is completed.

(b) No later than April 15 of each year until the termination of the suspension period, the Mayor's Office of Housing shall publish a report stating the total number of permanently affordable rental housing produced in San Francisco and the "Conversion Replacement Units" produced in the previous calendar year and a cumulative total of such housing produced in preceding years during the tracking period. For purposes of this Subsection, the Mayor's Office of Housing shall have the authority to determine what type and form of housing constitutes permanently affordable rental housing that has been produced.

(c) The Department shall not accept an application for the conversion of residential units under Section 1396 nor conduct a lottery under this Article prior to January 1, 2024. Thereafter, the lottery shall resume upon the earlier of the following: (1) ~~until~~ the first February following the Mayor's Office of Housing report pursuant to Subsection (b) showing that the total number of Conversion Replacement Units produced in the City of San Francisco

exceedsed the total number of units converted as identified in the Department's report prepared pursuant to Subsection (a); ~~under Section 1396.4(b)(1)-(6) and in no event shall it conduct a lottery prior to January 1, 2024; provided however, that the total period of suspension of the lottery shall not exceed~~or (2) completion of the "Maximum Suspension Period" as defined below.

(d) "Conversion Replacement Units" in any year shall be determined by subtracting 300 from the total number of permanently affordable rental units that the City produced in that year starting on January 1, 2014.

(e) The "Maximum Suspension Period" shall be the number of years calculated by dividing the total number of units approved for conversion under Section 1396.4(b)(1)-~~(6)~~(7) (the Expedited Conversion program) divided by 200 and rounded to the nearest whole number with the year 2014 as the starting point. For example, if 2400 units have been converted under Section 1396.4(b)(1)-~~(6)~~(7), then the maximum suspension period would be 12 years and ~~run until 2026~~expire on December 31, 2025.

Section 3. The San Francisco Subdivision Code is hereby amended by amending Section 1396, to read as follows:

SEC. 1396. ANNUAL CONVERSION LIMITATION.

(a) This Section governing annual limitation shall apply only to conversation of residential units. This Section also is subject to the limitations established by Section 1396.5's suspension of the lottery.

(b) Applications for conversion of residential units, whether vacant or occupied, shall not be accepted by the Department of Public Works, except that a maximum of 200 units as selected yearly by lottery by the Department of Public Works from all eligible applicants, may be approved for conversion per year for the following categories of buildings:

~~(a)~~ (1) Buildings consisting of four units ~~or less~~ in which ~~one~~ at least three of the units ~~has~~ have been occupied continuously by ~~one of~~ the applicant owners of record as their principle place of residence for three years prior to the date of registration for the lottery as selected by the Director~~.~~;

(2) Buildings consisting of three units in which at least two of the units have been occupied continuously by the applicant owners of record as their principle place of residence for three years prior to the date of registration for the lottery as selected by the Director;

(3) Buildings consisting of two units in which at least one unit has been occupied continuously by the applicant owner of record as his or her principle place of residence for three years prior to the date of registration for the lottery as selected by the Director; ~~or~~

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

~~(c)~~ (4) Buildings consisting of five or six units that were subject to the requirements of Section 1396.2(f) on or before April 15, 2013 where (A) no further evictions as set forth in Section 1396.2 have occurred in the building after April 15, 2013, (B) the building and all applicants first satisfied all the requirements for conversion under Section 1396.2(f) after January 24, 2020 and before resumption of the lottery under in accordance with the terms of Section 1396.5; and (C) 50 percent or more of the units have been occupied continuously by owners of record as their principle place of residence for ten years prior to the date of registration for the lottery as selected by the Director. Applicants for such buildings must apply for the lottery within five years of the resumption of the lottery under Section 1396.5(c) and remain eligible until selected;

(5) If the Expedited Conversion program under Section 1396.4 has been suspended until 2024 as a result of a successful lawsuit against the City and County of San Francisco

challenging Section 1396.4(g) or 1396.5: (A) buildings consisting of five or six units that participated in but were not selected for the 2012 or 2013 condominium conversion lottery in which 50 percent or more of the units have been occupied continuously by the applicant owners of record for no less than six years prior to the date of registration for the lottery as selected by the Director or (B) buildings consisting of five or six units in which: (i) 50 percent or more of the units have been occupied continuously by the applicant owners of record for no less than six years prior to the date of registration for the lottery as selected by the Director and (ii) the eligible applicant owners of record have a fully executed written agreement as of April 15, 2013 in which the owners each have an exclusive right of occupancy to individual units in the building to the exclusion of the owners of the other units. Applicants for buildings identified in this Subsection must first apply for the lottery within five years of the resumption of the lottery under Section 1396.5(c) and remain eligible until selected; or

~~(5)~~(6) Community apartments as defined in Section 1308 of this Code, which, on or before December 31, 1982, met the criteria for community apartments in Section 1308 of this Code and which were approved as a subdivision by the Department of Public Works on or before December 31, 1982, and where 75 percent of the units have been occupied continuously by the applicant owners of record for three years prior to the date of registration for the lottery as selected by the Director.

(c) The conversion of a stock cooperative as defined in Section 1308 of this Code to condominiums shall be exempt from the annual limitation imposed on the number of conversions in this Section and from the requirement to be selected by lottery where 75 percent of the units have been occupied for the lottery as selected by the Director.

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

(e)~~(f)~~ (1) Any ~~applicant~~application for a condominium conversion submitted after being selected in the lottery must meet the following requirements applicable to Subdivision Code Article 9, Conversions: Sections 1381, 1382, 1383, 1386, 1387, 1388, 1389, 1390, 1391(a) and (b),1392, 1393, 1394, and 1395.

(2) Any building subject to Section 1396.2 shall have all applicant(s) satisfy all the requirements for conversion under Section 1396.2(f) in order be eligible to convert pursuant to this Section 1396; provided, however, that any building subject to the prohibition on conversion under Section 1396.2, in particular a property with the eviction(s) set forth in Section 1396.2(b), is ineligible for conversion.

(3)(A) In addition, the applicant(s) ~~must~~shall certify that to the extent any tenant vacated his or her unit ~~after March 31, 2013~~within the seven years prior to the date of ~~selection in~~registration for the lottery as selected by the Director and before recordation of the final parcel or subdivision map, such tenant did so voluntarily or if an eviction or eviction notice occurred it was not pursuant to Administrative Code Sections 37.9(a)(8)-(14) unless such eviction or eviction notice complied with the requirements of Subsections (B)-(D) below.

(B) If ~~an eviction has taken placed~~the evicting owner(s) recovered possession of the unit under Administrative Code Sections 37.9(a)(11) or 37.9(a)(14), then the applicant(s) shall certify that the original tenant reoccupied or was given an opportunity to reoccupy the unit after the temporary eviction.

(C) If the evicting owner(s) recovered possession of the unit under Administrative Code Section 37.9(a)(10), then the applicant(s) shall certify that the Department of Building Inspection required the unit be demolished or permanently removed from housing use pursuant to a Notice of Violation or Emergency Order or similar notice, order, or act; all the necessary permits for demolition or removal were obtained; that the evicting owner(s) complied in full with Administrative Code Section 37.9(a)(10) and (c); and

that an additional unit or replacement unit was not constructed in the building after the demolition or removal of the unit previously occupied by the evicted tenant.

(D) If the evicting owner(s) recovered possession of a unit under Administrative Code Section 37.9(a)(8), then the applicants shall certify that: (i) only one unit in the building was the subject of such eviction during the seven year period, (ii) any surviving owner or relative named as the intended resident of the unit in the Section 37.9(a)(8) eviction notice also is presently an owner applying for the conversion of the same unit, and (iii) the subject applicant owner has occupied the unit continuously as his or her principle residence for three years prior to the date of registration for the lottery as selected by the Director.

(f) The Department shall review all available records, including eviction notices and records maintained by the Rent Board for compliance with Subsection (e). If the Department finds that a violation of Subsection (e) occurred prior to recordation of the final map or final parcel map, the Department shall disapprove the application or subject map. If the Department finds that a violation of Subsection (e) occurred after recordation of the final map or parcel map, the Department shall take such actions as are available and within its authority to address the violation.

Section 4. Uncodified. Notwithstanding the condominium conversion lottery selection provisions of Subdivision Code Section 1396 and 1396.3 or the other terms of this legislation, the most senior class of buildings participating but not being selected in the 2013 condominium lottery may apply for a condominium conversion subdivision on or after January 1, 2014 but before December 31, 2014 subject to the following: (1) the buildings and applicants shall satisfy all of the eligibility requirements necessary to participate in the lottery as set forth in Sections 1396 and 1396.3 in effect immediately prior to the effective date of this legislation and (2) the applicants shall satisfy all other applicable terms of Subdivision Code Article 9 (Conversions). Any buildings that apply under the process set forth in this uncodified

Section are explicitly exempt from the requirements of Sections 1396.4, 1396.5, and 1396 as set forth in this legislation. Any building eligible to convert to condominiums: (a) under this Section 4, (b) after being selected for conversion in the 2013 condominium conversion lottery, or (c) that satisfies the requirements of Section 1359, is excluded from any of the terms of Section 7 below, specifically any limitation or prohibition of any kind concerning application submission, review, and approval for a parcel or subdivision map.

Section 5. Effective Date. This ordinance shall become effective 30 days from the date of passage.

Section ~~45~~6. This section is uncodified. In enacting this Ordinance, the Board intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation, charts, diagrams, or any other constituent part of the Subdivision Code that are explicitly shown in this legislation as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the legislation.

Section ~~6~~7. ~~Suspension of this Ordinance~~Effect of Litigation. (a) In the event that there is a lawsuit against the City and County of San Francisco filed in any court challenging any part of ~~this legislation or the validity of any lifetime lease entered into pursuant to this legislation Subsection 1396.4(g) or~~ Section 1396.5 or any obligation on the part of any property owner under Section 1396.4(g), then upon the service of such lawsuit upon the City and County of San Francisco, the Expedited Conversion program described in Section 1396.4 will be suspended as set forth below unless and until either (1) there is a final judgment in the lawsuit in all courts and the validity of ~~this legislation in its entirety~~the challenged provision(s) specified above is upheld or (2) the suspension of the lottery through January 1, 2024 as mandated by Section 1396.5 is completed.

(b) Legal Challenge to Section 1396.5 During ~~any such~~ suspension of the Expedited Conversion program pursuant to this Subsection based on a legal challenge to Section 1396.5, ~~any~~the Department, upon service of the lawsuit, shall not accept or approve any application for conversion under the program. After 180 days following service of the lawsuit, the Department shall not issue any tentative parcel map or tentative map approval for conversion and shall deny any application that has not obtained such approval. If an owner(s) obtained a final and effective tentative parcel map or tentative map approval on or prior to the 180th day following service of the lawsuit, then that applicant may proceed to final parcel map or final subdivision map approval and recordation of the subdivision map. At any time during a suspension of the Expedited Conversion program, any applicant may seek a refund of the condominium conversion application and condominium conversion ~~impact~~ fees ~~and the provisions of Section 1396 in effect on April 15, 2015 shall be operative~~. Upon a request for an application fee refund, the reviewing City Departments shall deduct incurred costs based on time and materials expended and shall refund any remaining portion of the application fee(s).

(c) Legal Challenge to Section 1396.4(g)'s Property Owner Obligations. During a suspension of the Expedited Conversion program pursuant to this Subsection based on a legal challenge to any obligation on the part of any property owner under Section 1396.4(g), the Department, upon service of the lawsuit, shall not accept or approve any application for conversion under the program for a building with a unit occupied by a non-owning tenant(s). If an owner(s) obtained a final and effective tentative parcel map or tentative map approval on or prior to the service of the lawsuit, then that applicant may proceed to final parcel map or final subdivision map approval and recordation of the subdivision map. Notwithstanding the effects of a suspension of the Expedited Conversion program pursuant to this Subsection described above and the terms of Subsection (e), the Department shall continue to accept,

tentatively approve, and finally approve any application for a conversion pursuant to the requirements of the Expedited Conversion program for any building that has no units occupied by a non-owning tenant(s). At any time during a suspension of the Expedited Conversion program, any applicant may seek a refund of the condominium conversion application and condominium conversion ~~impact~~ fees and the provisions of Section 1396 in effect on April 15, 2015 shall be operative. Upon a request for an application fee refund, the reviewing City Departments shall deduct incurred costs based on time and materials expended and shall refund any remaining portion of the application fee(s).

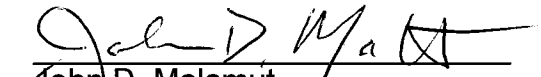
(d) Legal Challenge to both Section 1396.5 and Section 1396.4(g)'s Property Owner Obligations. During a suspension of the Expedited Conversion program pursuant to this Subsection based on a legal challenge as identified in both Subsection (b) and (c), the Department, upon service of the lawsuit, shall not accept or approve any application for conversion under the program. If an owner(s) obtained a final and effective tentative parcel map or tentative map approval on or prior to service of the lawsuit, then that applicant may proceed to final parcel map or final subdivision map approval and recordation of the subdivision map. At any time during a suspension of the Expedited Conversion program, any applicant may seek a refund of the condominium conversion application and condominium conversion fees. Upon a request for an application fee refund, the reviewing City Departments shall deduct incurred costs based on time and materials expended and shall refund any remaining portion of the application fee(s).

(e) Upon the completion of the suspension of the Expedited Conversion period the suspended Expedited Conversion program described in Section 1396.4 shall resume as if no suspension had occurred. Applicants with suspended applications may resubmit their applications along with all required fees and shall be considered in the same position as they had at the time of the suspension. The Department shall treat the time periods described in

Section 1396.4(b)(1)-(7) as having been tolled during the time of suspension of the Expedited Conversion program.

(f) Effect of Successful Lawsuit against the City, Board of Supervisors hearing. If there is a final judgment in the lawsuit in all courts and the challenged provision(s) specified in this Section are deemed invalid in whole or in part, the Expedited Conversion program set forth in Section 1396.4 shall terminate except for those particular buildings authorized to convert pursuant to Subsection (b), (c), or (d) and the condominium conversion lottery shall be suspended in its entirety until its resumption after January 1, 2024. Upon a court's final judgment in the lawsuit in all courts that the challenged provision(s) specified in this Section are deemed invalid in whole or in part, the City Attorney shall promptly notify the Clerk of the Board of Supervisors of such judgment. Upon receipt of this notice, the Clerk shall schedule a public hearing(s) before the full Board or an appropriate committee of the Board, based on consultation with the President of the Board of Supervisors. The purpose of such hearing(s) shall be to provide a forum for public dialogue and shall address, but not be limited to, consideration of revisions to the condominium conversion process consistent with the court's findings, exploration of alternative condominium conversion policies that seek to balance the often competing interests of the City, property owners, prospective owners, and tenants; discussion of the benefits and burdens as well as the distributive impacts of a citywide condominium conversion process and affordable housing production and opportunities; and concepts that support and balance the goal of homeownership with protection of rental properties and their tenants.

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

By: 

John D. Malamut
Deputy City Attorney
n:\legana\as2013\1200120\00853641.doc

City and County of San Francisco
Tails
Ordinance

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

File Number: 120669 **Date Passed:** June 18, 2013

Ordinance amending the Subdivision Code, by adding Section 1396.4, to adopt a condominium conversion fee applicable to certain buildings that would be permitted to convert during a seven year period, and subject to specified requirements, including lifetime leases for non-purchasing tenants; adding Section 1396.5, to suspend the annual condominium conversion lottery until 2024 and resume said lottery under specified circumstances tied to permanently affordable rental housing production; amending Section 1396, to restrict future condominium lotteries to buildings of no more than four units with a specified number of owner occupied units for three years prior to the lottery and provide an exception for certain five- and six-unit buildings to participate in the lottery; and adopting environmental findings.

January 28, 2013 Land Use and Economic Development Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

January 28, 2013 Land Use and Economic Development Committee - CONTINUED AS AMENDED

February 25, 2013 Land Use and Economic Development Committee - CONTINUED

March 11, 2013 Land Use and Economic Development Committee - CONTINUED

March 25, 2013 Land Use and Economic Development Committee - CONTINUED

April 15, 2013 Land Use and Economic Development Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

April 15, 2013 Land Use and Economic Development Committee - CONTINUED AS AMENDED

April 22, 2013 Land Use and Economic Development Committee - RECOMMENDED

May 07, 2013 Board of Supervisors - RE-REFERRED

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

May 13, 2013 Land Use and Economic Development Committee - CONTINUED

May 20, 2013 Land Use and Economic Development Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

May 20, 2013 Land Use and Economic Development Committee - DUPLICATED AS AMENDED

May 20, 2013 Land Use and Economic Development Committee - CONTINUED AS AMENDED

June 03, 2013 Land Use and Economic Development Committee - RECOMMENDED

June 11, 2013 Board of Supervisors - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

Ayes: 8 - Avalos, Breed, Campos, Chiu, Cohen, Kim, Mar and Yee

Noes: 3 - Farrell, Tang and Wiener

June 11, 2013 Board of Supervisors - PASSED ON FIRST READING AS AMENDED

Ayes: 8 - Avalos, Breed, Campos, Chiu, Cohen, Kim, Mar and Yee

Noes: 3 - Farrell, Tang and Wiener

June 18, 2013 Board of Supervisors - FINALLY PASSED

Ayes: 8 - Avalos, Breed, Campos, Chiu, Cohen, Kim, Mar and Yee

Noes: 3 - Farrell, Tang and Wiener

File No. 120669

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 6/18/2013 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Unsigned
Mayor

June 28, 2013
Date Approved

I hereby certify that the foregoing ordinance, not being signed by the Mayor within the time limit as set forth in Section 3.103 of the Charter, or time waived pursuant to Board Rule 2.14.2, became effective without his approval in accordance with the provision of said Section 3.103 of the Charter or Board Rule 2.14.2.

Angela Calvillo
Clerk of the Board