

TO: Members of the Public Safety & Regulatory
Services Committee

FROM: Erik Nilsson
Assistant City Attorney

DATE: January 26, 2007

RE: Condominium Conversion Ordinance Amendments

MEMORANDUM

ISSUE

You asked this office to summarize the current law concerning condominium conversions and to address whether the City has the requisite legal authority to adopt proposed amendments to Minneapolis Code of Ordinances (MCO) Chapter 250, entitled "Condominium Conversions."

BACKGROUND

In the fall of 2005, the potential regulation of condominium conversions, including amendments to MCO Chapter 250, was extensively discussed in a staff working group established by Mayor Rybak. The City Council ultimately adopted amendments to the City's Truth in Sale of Housing (TISH) Ordinance contained in MCO Chapter 248, which addressed condominium common area repairs and associated disclosures to potential purchasers. In addition to the adopted TISH amendments, the Mayor's working group also created an educational pamphlet on the condominium conversion process that includes legal assistance references and is available for distribution through housing advocacy services, including Minneapolis Housing Services.

DISCUSSION

The conversion of rental apartments to condominiums is governed by both Minnesota state law and Minneapolis ordinance. Minn. Stat. § 515B governs the creation of condominiums and other "common interest communities" under state law. The City ordinance addressing condominium conversions is contained in MCO Chapter 250.

I. Minn. Stat. § 515B.4-111

A. Conversion Process

The state law procedure for condominium conversion is contained in Minn. Stat. § 515B.4-111. It mandates that developers comply with specific notice requirements regarding the intended conversion, including tenant vacation date, contemplated remodeling, and purchase options for existing tenants. The statute requires a minimum notice period of 120 days to existing tenants to vacate the building because of the intended conversion. Minn. Stat. § 515B.4-111(a). This period may be extended for an additional 60 days upon request of a tenant(s) if any occupant of the unit is 1) 62 years of age or older, 2) a person with a defined disability, or 3) a minor child on the date the notice is provided. Minn. Stat. § 515B.4-111(a)(3). This extension request by the tenant(s) must be in writing, contain reasonable proof of qualification, and be given to the converting entity within 30 days after the notice of conversion is delivered or mailed. Id. The developer's notice to the existing tenants must be contained in an envelope conspicuously marked as "Notice of Conversion." Minn. Stat. § 515B.4-111(a)(4). Service of the notice may be accomplished by hand delivery or mailing. Minn. Stat. § 515B.4-111(a).

However, if an existing tenant has a term lease, then the landlord or new buyer of the conversion unit may not terminate that lease during its term. Minn. Stat. § 515B.4-111(g). For example, if a tenant signed a one year lease two months ago, then the tenant cannot be required to vacate until after the lease expires, as long as there is compliance with the terms of the lease.

As part of the notice procedure, the converting entity must also provide existing tenant(s) with a purchase option and agreement. The provision states as follows:

For 60 days after delivery or mailing of the notice described in subsection (a), the holder of the lessee's interest in the unit on the date the notice is mailed or delivered shall have an option to purchase that unit on the terms set forth in the purchase agreement attached to the notice. The purchase agreement shall contain no terms or provisions which violate any state or federal law relating to discrimination in housing.

Minn. Stat. § 515B.4-111(d). The statute does not address what constitutes the required "terms" of the purchase agreement, but, at a minimum, it must include a purchase price. This interpretation is supported by the following restriction on sale of the condominium unit:

If the holder of the lessee's interest fails to purchase the unit during that 60-day period, the unit owner may not offer to dispose of an interest in that unit during the following 180 days at a price or on terms more favorable to the offeree than the price or terms offered to the holder. Id.

With regard to repairs and remodeling, the statute states that "no repair work or remodeling may be commenced or undertaken in the occupied units or common areas of the building during the notice period, unless reasonable precautions are taken to ensure the safety and security of the occupants." Minn. Stat. § 515B.4-111(c). All construction, repairs, and remodeling must comply with the State Building Code and/or Housing Maintenance Code. The developer must also obtain the required building permits, as well as permits governing other construction aspects, including electrical and plumbing permits. Obtaining the required permit(s) triggers an

inspection to ensure that the repairs are in conformance with the Code standards. The City currently enforces its construction standards through the issuance of permits, inspections, and legal enforcement through criminal prosecution, if necessary. New construction may also require several zoning approvals.

Finally, Minn. Stat. § 515B.4-105 requires that sellers of conversion units provide prospective purchasers with a disclosure statement that contains the following information in addition to other required disclosures:

(1) a professional opinion prepared by a registered professional architect or engineer, licensed in this state, describing the present condition of all structural components, and mechanical and electrical installations, material to the use and enjoyment of the building to the extent reasonably ascertainable without disturbing the improvements or dismantling the equipment;

(2) a statement by the declarant of the expected useful life of each item reported on in paragraph (1) or a statement that no representations are made in that regard; and

(3) a list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the estimated cost of curing those violations.

B. Remedies for Violation

Violations of the condominium conversion process can be addressed by aggrieved tenants and/or prospective purchasers in a court of law. These individuals are in the best position to know when a violation occurs and to take action to address the violation. The statute provides for a private civil cause of action to recover damages for violation of the statute, in addition to the award of attorney's fees, costs, and punitive damages for a "willful failure to comply." Minn. Stat. § 515B.4-116. Failure of the developer to give proper notice of conversion pursuant to Minn. Stat. § 515B.4-111 also provides a defense for a tenant in an eviction action brought by the landlord and/or converting entity.

II. MCO Chapter 250

A. Conversion Process

MCO Chapter 250 mirrors the state law requirements regarding the provision of notice and a purchase option to existing tenant(s). However, the ordinance also requires that the conversion notice be mailed to the "council member of the ward in which the conversion condominium is located and to the Minneapolis Planning Commission." MCO § 250.30. This appears to be primarily a pro forma requirement, however, because the Planning Commission does not take any action on condominium conversion notices. Unlike subdivision approval or platting, there is no requirement of municipal approval. Furthermore, if there is no change in legal use, there are no zoning issues.

Similar to state law, the ordinance also details several express and implied warranties to prospective purchasers of the condominium units. These warranties include the following:

A declarant impliedly warrants that a unit and the common elements in the condominium are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by the declarant or made by any person in contemplation of the creation of the condominium will be:

- (1) Free from defective materials; and
- (2) Constructed in accordance with applicable law, according to sound engineering and construction standards, and in a professional manner.

MCO § 250.70(b). The ordinance also provides for additional protection for purchasers of a conversion condominium unit in the form of a truth-in-housing disclosure report. MCO § 250.120. This report would reveal any required major repairs and structural defects according to the Truth in Sale of Housing ordinance contained in MCO Chapter 248.

B. Remedies for Violation

Ordinance violations, in general, may be prosecuted as criminal violations akin to a misdemeanor. Chapter 4, § 6 of the Minneapolis Charter provides that the “City Council may prescribe punishment for the breach of any ordinance of the City to the extent of a fine not exceeding \$700, and imprisonment not exceeding 90 days, or both” (Minn. Stat. § 609.034 increased maximum penalty to \$1000). In addition, violations of Title 12 (“Housing Code”), which includes MCO Chapter 250, can be enforced through the administrative enforcement and hearing process outlined in MCO Chapter 2. The City does not have the authority to create a private civil cause of action for violation of an ordinance.

III. Proposed Amendments to MCO Chapter 250

Several amendments to the condominium conversion ordinance in MCO Chapter 250 have been proposed. Every time the City seeks to act in a particular area, a source of authority for that action, whether it is specific authority or general authority, must be found. Home rule charter cities, like Minneapolis, can obtain the authority either from a subject matter statute, or, if the state has not preempted the City from acting in a certain area, the City may obtain authority from its Charter. As noted above, state law governs the creation of condominiums and the City ordinance primarily mirrors and operates within the confines of Minn. Stat. § 515B.4-111. With regard to additional local regulation of the condominium conversion process, Minn. Stat. § 515B.1-106(a) states as follows:

[A] zoning, subdivision, building code, or other real estate use law, ordinance, charter provision, or regulation may not directly or indirectly prohibit the [condominium] form of ownership or impose any requirement upon a [condominium], upon the creation or disposition of a [condominium] or upon any part of the [condominium]

conversion process which it would not impose upon a physically similar development under a different form of ownership.

This appears to be an express preemption provision that would invalidate most additional local regulation. However, there is an exception provided in Minn. Stat. § 515B.1-106(c), which states as follows:

A . . . home rule charter city, pursuant to an ordinance or charter provision establishing standards to be applied uniformly within its jurisdiction, may prohibit or impose reasonable conditions upon the conversion of buildings to [condominiums] only if there exists within the city a significant shortage of suitable rental dwellings available to low and moderate income individuals or families or to establish or maintain the city's eligibility for any federal or state program providing direct or indirect financial assistance for housing to the city.

The provision requires that the City conduct a public hearing to make the requisite findings prior to the adoption of an additional regulation pursuant to the authority granted above. Specific findings would have to be made and evidence introduced into the record regarding the claim that there exists within the City “a significant shortage of suitable rental dwellings available to low and moderate income individuals or families.” If the City decided to prohibit the conversion of buildings to condominiums through adoption of a moratorium, it can only be effective for a maximum period of 18 months. Minn. Stat. § 515B.1-106(f).

The statute does not provide any further explanation of exactly what would constitute “a significant shortage of suitable rental dwellings available to low and moderate income individuals or families.” The determination of whether this standard is met and, therefore, warrants additional local regulation is ultimately a policy determination for the City Council to make. However, based on the extent of municipal enforcement authority with regard to the maintenance and habitability of rental property within the City, “suitable” rental dwellings would mean buildings that meet the minimum standards of Code compliance.

The ability of the City to impose “reasonable conditions” upon the condominium conversion process after making the required findings also indicates that the adopted conditions should have a nexus with the substance of the findings. This nexus consideration implies that “reasonable” conditions would be those regulations that are intended to ameliorate the “significant shortage” of Code compliant, affordable rental property that currently exists within the City. A court could find that the City exceeded its authority in adopting a provision that does not have a nexus with the required findings.

Finally, the statute also specifically addresses the effect of an ordinance adopted pursuant to the authority granted in Minn. Stat. § 515B.1-106(c) on existing and proposed conversion condominiums. It states as follows:

Any ordinance or charter provision adopted pursuant to this subsection shall not apply to any existing or proposed conversion [condominium] (i) for which a bona fide loan commitment for a consideration has been issued by a lender and is in effect on the

date of adoption of the ordinance or charter provision, or (ii) for which a notice of conversion or intent to convert required by section 515B.4-111, containing a termination of tenancy, has been given to at least 75 percent of the tenants and subtenants in possession prior to the date of adoption of the ordinance or charter provision.

Minn. Stat. § 515B.1-106(c). The ordinance would take effect upon adoption by the City, which requires City Council approval, mayoral signature, and publication.

CONCLUSION

Minn. Stat § 515B and MCO § 250 contain several provisions that protect existing tenant(s) rights in a condominium conversion situation, as well as the rights and investment of prospective buyers in a converted condominium unit. State law prohibits additional local regulation of the condominium conversion process. However, there is an exception for the prohibition or imposition of “reasonable conditions” upon the condominium conversion process provided a public hearing is held and the requisite findings are made regarding a “significant shortage of suitable rental dwellings available to low and moderate income individuals.” Any regulation must apply City-wide based on the express language in Minn. Stat. § 515B.1-106(c) that the home rule charter city’s ordinance “[establish] standards to be applied uniformly within [the home rule charter city’s] jurisdiction.”

Assuming the required statutory findings can be made, the City has the authority to amend its condominium conversion ordinance. The proposed amendments include the creation of a new City permit to oversee the conversion process, the provision of relocation assistance to tenants in affordable conversion units, a reserve fund study requirement by the converting entity, and affordable housing protections. In order to qualify as a “reasonable” regulation, any contemplated ordinance amendments should have a nexus with the required statutory findings. Each of the proposed amendments meets this test.