



# AGENDA REPORT

**TO:** Jestin D. Johnson  
City Administrator

**FROM:** William Gilchrist  
Director, Planning and  
Building

**SUBJECT:** Replacement Housing Unit  
Regulations Ordinance

**DATE:** September 10, 2024

City Administrator Approval

  
Jestin Johnson (Sep 27, 2024 04:40 PDT)

Date: Sep 27, 2024

## **RECOMMENDATION**

**Staff Recommends That The City Council Conduct A Public Hearing And, Upon Conclusion, Adopt an Ordinance, As Recommended By The Planning Commission:**

- 1) Adding Chapter 17.122 To The Planning Code (Oakland Municipal Code Title 17) To Specify Local Procedures For Complying With Replacement Unit Requirements Of The Housing Crisis Act, Adopted By Senate Bill 330 (2019), And Subsequently Amended By Assembly Bill 1218 (2023); And**
- 2) Making Appropriate California Environmental Quality Act Findings.**

## **EXECUTIVE SUMMARY**

State law Senate Bill (SB) 330 (Housing Crisis Act of 2019)<sup>1</sup> established new provisions related to demolition of residential units, including the rights of existing occupants and affordability requirements for demolished units. The law provides different options to comply with these requirements.

The proposed ordinance includes provisions to bring the current City of Oakland (City) Planning Code into conformance with SB 330, clarify replacement unit requirements and noticing requirements to existing occupants and prospective tenants, and preserve the existing affordable housing stock.

On September 18, 2024, the Planning Commission recommended that the City Council adopt an ordinance to approve the proposed Planning Code amendment, adding Chapter 17.122 Replacement Housing Unit Regulations.

## **BACKGROUND / LEGISLATIVE HISTORY**

The impetus for these revisions is recent changes in State law that provide additional requirements for new housing development projects that involve the demolition of existing

<sup>1</sup> [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200SB330](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB330)

residential units. These provisions of SB 330, which modified Government Code sections relating to zoning and density bonus, and AB 1218<sup>2</sup>, which amended the law, require all new housing development projects to provide replacement units of equivalent size, defined as having the same number of bedrooms as the demolished units. Additionally, the proposed ordinance will implement two action items in the 2023-2031 Housing Element<sup>3</sup>:

- Action 1.1.11 Enforce the Tenant Right to Return and Protections from Coercive Buyouts
- Action 2.2.5 Extend Local Replacement Unit Provisions

In mid-2024, Planning staff, in consultation with the City Attorney's Office, drafted the Replacement Housing Units Regulations to reflect these changes to State law. The City's Housing and Community Development Department reviewed the ordinance in August 2024 to ensure the feasibility of implementing its responsibilities as drafted.

The Planning Commission conducted a duly noticed public hearing of the proposal on September 18, 2024.

## **ANALYSIS AND POLICY ALTERNATIVES**

The proposed ordinance adds Chapter 17.122 to the Planning Code, which includes provisions to bring the code into conformance with SB 330, clarify replacement unit requirements and noticing requirements to existing occupants and prospective tenants, and preserve the existing affordable housing stock. The proposed ordinance includes several clarifying provisions to guide implementation of SB 330 in the City.

As such, the proposed ordinance adds to the Citywide priority of advancing Housing Security and Homelessness Solutions. The proposed ordinance comprehensively addresses this priority by protecting tenants and preserving affordable housing.

### *Prohibited Demolitions*

The proposed ordinance prohibits demolition of dwelling units when:

- The proposed development would result in fewer units than would be demolished; or
- There have been any adjudicated cases evidencing tenant harassment or illegal eviction in the previous five years.

In addition, the proposed ordinance would require an applicant to clearly document the means by which existing units were vacated and provides that if the applicant cannot demonstrate that the units were lawfully vacated, that permits may be denied or revoked.

### *Protected Unit*

SB 330 includes a no net loss provision that prohibits the City from approving a housing development project that requires the demolition of existing units unless the project will create at least as many units as will be demolished. In addition, certain types of units—“protected units”—are subject to specific replacement and affordability provisions. The proposed ordinance

<sup>2</sup> [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=202320240AB1218](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB1218)

<sup>3</sup> [https://cao-94612.s3.us-west-2.amazonaws.com/documents/Oakland-Adopted-Housing-Element-Ch-1-4-21023\\_2023-02-17-213804\\_ddow.pdf](https://cao-94612.s3.us-west-2.amazonaws.com/documents/Oakland-Adopted-Housing-Element-Ch-1-4-21023_2023-02-17-213804_ddow.pdf)

includes a definition of protected unit consistent with SB 330, and includes any unit that has been:

- Subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to Lower Income Households in the last five years;
- Subject to the Residential Rent Adjustment Program (Oakland Municipal Code Chapter 8.22 Article I)<sup>4</sup> or any other form of rent or price control;
- Occupied by a Lower Income Household in the last five years;
- Withdrawn from rent or lease pursuant to the Ellis Act in the last ten years.

#### *Replacement of Protected Units*

Consistent with the SB 330, the proposed ordinance requires that the developer provide replacement deed-restricted units for each demolished protected unit. “Deed restricted” means that the project applicant must enter into a regulatory agreement, subject to regular monitoring and recorded against the property, prior to construction of the replacement units. Replacement deed-restricted units must be of equivalent size to the demolished units, containing at least the same number of bedrooms as the dwelling units being replaced. Additionally, deed-restricted replacement units in newly constructed buildings must contain at least ninety (90) percent of the square footage as the dwelling unit being replaced.

Detailed provisions addressing the affordability levels of replacement units in concert with the requirements under State law include:

- The proposed ordinance requires that any demolished protected unit shall be replaced with equivalent-sized units.
- The proposed ordinance includes a provision that replacement units be available to a household that falls in an equivalent or lower income category as those households currently or last in occupancy of the Protected Units.
- The proposed ordinance also includes a provision that in cases where the household income of a displaced tenant(s) is unknown, households would be presumed to be lower income in proportion to households throughout the city, as calculated using the US Department of Housing and Urban Development’s Comprehensive Housing Affordability Strategy (CHAS) database<sup>5</sup>.

#### *Tenants’ Rights*

The proposed ordinance establishes certain rights for existing occupants, including noticing requirements and right of first refusal.

The developer must provide to all existing occupants notice of their intention to submit an application for redevelopment at least 30 days prior to submission. The notice must outline the process and tenants’ rights, as well as clearly state that the notice is not an eviction notice. Similar noticing requirements apply for prospective tenants.

Lower income occupants in demolished protected units are entitled to a right of first refusal to move into the new building at a rent affordable to their income level. The ordinance clarifies that an existing tenant’s right of first refusal extends to a comparable unit (not just any unit) in the building. The proposed ordinance also includes a specific timeline by which a displaced tenant must indicate interest in returning to a replacement unit.

<sup>4</sup> <https://www.oaklandca.gov/topics/rent-adjustment-program>

<sup>5</sup> <https://www.huduser.gov/portal/datasets/cp.html>

In addition to these provisions, all other tenant protections as managed by the Rent Adjustment Program apply. This ordinance relies on existing legal methods of vacating a property. It does not expand avenues for evictions of existing tenants.

### *Unit Inventory*

Prior to application submission for a planning permit, the developer must prepare a Unit Inventory that accounts for all affected dwelling units. The plan must:

- Document the occupancy status of all units, including income levels for each household;
- Affirm compliance with all noticing requirements;
- Outline the plan for each occupied unit, including a tenant opt-in to being contacted about right of first refusal for replacement units; and
- Document the occupancy history of any vacant units.

Prior to issuance of a building or demolition permit, and of a certificate of occupancy, the developer must issue first and second addenda, respectively. These addenda document the final occupancy information for each unit, lawful methods of vacating each unit, and provide a status update on tenant right of first refusal.

### **FISCAL IMPACT**

Implementation of these changes will be a component of the existing approval process administered by the Planning and Building Department, which collects fees for such review and approvals as established in the Master Fee Schedule. Staff will inform the public of the new regulations as part of all applicable inquiries and apply the new regulations as part of all applicable planning and building permit applications. Staff will also develop any application materials including summaries and guides using internal resources and staff's time.

### **PUBLIC OUTREACH / INTEREST**

The proposed ordinance brings the City's Planning Code into compliance with State law as established by SB 330 (2019) and AB 1218 (2023). The proposed ordinance only exceeds state law through provisions clarifying vague requirements.

A public hearing was conducted by the Planning Commission on September 18, 2024. The meeting was noticed in the *Oakland Tribune*.

### **COORDINATION**

In mid-2024, Planning staff, in consultation with the City Attorney's Office, drafted the Replacement Protections Demolition Ordinance to reflect these changes to State law. The City's Housing and Community Development Department reviewed the ordinance to ensure the feasibility of implementing its responsibilities as drafted.

### **SUSTAINABLE OPPORTUNITIES**

**Economic:** The proposed ordinance will support preservation of Oakland's existing affordable housing stock. It would help provide housing affordable to existing Oakland residents.

**Environmental:** There are no direct environmental implications.

**Race & Equity:** The City conducted a Racial Equity Impact Analysis (REIA) for the 2023-2031 Housing Element<sup>6</sup>. This analysis found that in Oakland, 69 percent of Hispanic residents and 68 percent of Black residents are renters, while only 48 percent of White residents are renters. The analysis also finds that 47 percent of renters in Oakland are cost burdened, while only 32 percent of homeowners are cost burdened. Furthermore, 65 percent of White residents earn above the Area Median Income (AMI), while over two-thirds of Blacks and Hispanics earn less than the AMI. Clearly, Black and Hispanic residents of Oakland are significantly more vulnerable to displacement due to eviction and rising rents.

The proposed ordinance helps ensure housing stability for Oakland residents in an equitable and sustainable manner by requiring development projects to provide deed-restricted affordable replacement units. Additionally, lower income renters will have the right of first refusal to move into a unit of equivalent size and at an affordable rent. Notably, this ordinance does not expand avenues for eviction of existing tenants.

Action 1.1.11 of the 2023-2031 Housing Element states that the City will enforce the tenant right to return and protections from coercive buyouts. According to the REIA, this action, which is accomplished by the proposed ordinance, would have a moderate equity impact. Critically, the proposed ordinance will ensure that when units affordable to very low-income residents are demolished, the new development will have an equal number of units affordable to those income levels in the new development.

Action 2.2.5 of the Housing Element states that the City will extend local replacement unit provisions. According to the REIA, this action, which is accomplished by the proposed ordinance, would have a moderate equity impact. In particular, the proposed ordinance requires the developer to report on affected tenants' statuses at key milestones and allows tenants to opt-in to receiving communications. This will help ensure that tenants can utilize their right of first refusal.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The proposed amendments to the Planning Code rely on the following California Environmental Quality Act (CEQA) findings: (1) a determination that no further environmental review is required following the certified Oakland 2045 General Plan Update - Phase 1 Environmental Impact Report pursuant to Public Resources Code section 21166 and CEQA Guidelines Section 15162 or 15163; (2) this proposal is exempt pursuant to CEQA Guidelines section 15183 (projects consistent with General Plan and zoning); and (3) this proposal is exempt pursuant to CEQA Guidelines Sections 15061(b)(3) (general rule, no significant effect on the environment). Each of these findings provide a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance.

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<sup>6</sup> [https://cao-94612.s3.us-west-2.amazonaws.com/documents/Housing-Element-REIA-1.6.23\\_Final.pdf](https://cao-94612.s3.us-west-2.amazonaws.com/documents/Housing-Element-REIA-1.6.23_Final.pdf)

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That The City Council Conduct A Public Hearing And, Upon Conclusion, Adopt an Ordinance, As Recommended By The Planning Commission:

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- 2) Making Appropriate California Environmental Quality Act Findings.

For questions regarding this report, please contact TIMOTHY GREEN, PLANNER II, at (510) 238-6436.

Respectfully submitted,

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