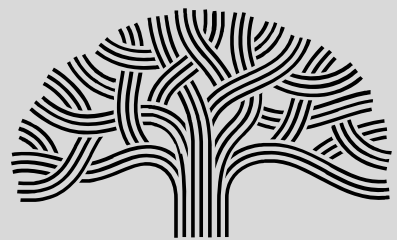


Replacement Housing Unit Regulations

Presentation to the City Council
October 15, 2024

Planning and Building Department



CITY OF
OAKLAND



Agenda

- **Legal Requirements**
- **Proposed Planning Code Chapter**
- **CEQA Findings**
- **Recommendation**

Legal Requirements

The proposed Planning Code chapter implements the requirements of State law listed below:

- Housing Crisis Act (SB 330) – Established new provisions related to demolition of residential units, including the rights of existing occupants and affordability requirements for demolished units.
- AB 1218 - Amends the Housing Crisis Act.
- 2023-2031 Housing Element.
 - Action 1.1.11: Enforce the tenant right to return and protections from coercive buyouts.
 - Action 2.2.5: Extend local replacement unit provisions.

17.122 - Replacement Housing Unit Regulations

Proposed Planning Code Chapter

17.122.020 - Definitions

- **Protected Unit is a rental dwelling unit that is**
 - currently restricted to rents affordable to Lower Income Households, currently subject to any other form of rent control, or was subject to the above in the preceding five years, even if the unit has been vacated or demolished;
 - occupied by a Lower Income Household or was occupied by such in the preceding five years, even if the unit has been vacated or demolished; or
 - has been withdrawn from rent or lease pursuant to the Ellis Act in the preceding ten years.

17.122.020 – Definitions (cont'd)

- **Demolition of Protected Units**

- Any action that results in the elimination of, or reduction in the number of bedrooms in, one or more existing Protected Units.

- **Equivalent Size**

- Each Replacement Deed-Restricted Unit contains at least the same number of bedrooms as the unit being Replaced.
- Replacement Deed-Restricted Units in newly constructed buildings must also contain at least 90% of the square footage of the unit being replaced.

17.122.030 - Applicability

- Applies to any proposed project on a property on which a unit is or was located in the preceding ten years.
- Does not apply if all of the following exist:
 1. The project proposes an Industrial Activity
 2. The property is in in a zone that doesn't allow Residential Activities
 3. The existing units are not Work/Live
 4. The units are or were unpermitted.

17.122.030 - Applicability

- Projects that proposed to legalize unpermitted units and are subject to a code enforcement action may exceed the maximum allowable density and subject to the following:
 - Units in excess of the maximum density must be deed restricted affordable
 - The previously unpermitted units retain their rent control status and the units shall be treated as Replacement Deed-Restricted Units if the project includes Demolition of Protected Units
 - Project must comply with all code requirements, but may request a waiver of planning code development standards of the underlying zone if the standard would physically preclude the proposal to legalize the unpermitted unit

17.122.040 – Replacement of Protected Units

- The development must provide replacement units of Equivalent Size to be made available as Affordable Housing for households in the same or lower income category as those households last in occupancy of the Protected Units. For units where household income is unknown, replacement units must provide affordable units proportional to citywide income categories.
- If all Protected Units have been vacated or demolished within the preceding five-year period, the development must provide Replacement Units based on the point during that period with the most extant units.
- For a unit that was subject to rent or price control within the preceding five-year period and was last occupied by an above lower income household, the Replacement Deed-Restricted Unit must be made available to a low-income household.

17.122.040 – Replacement of Protected Units

- For a non-residential project, the Developer must demonstrate that they have acquired sufficient Replacement Unit Rights as part of their application.
 - “Replacement Unit Rights” are generated by a project which adds housing units to the City’s supply, and one Replacement Unit Right equals one housing unit within such a project.
 - Replacement Unit Rights may be generated by a separate project either undertaken by the Developer or by others from whom the Developer has obtained such “rights” in a legally binding manner.

17.122.060 – Unit Inventory

- As part of the application, the Developer must submit a Unit Inventory that accounts for all units that are proposed to be affected.
- For each affected unit, the Unit Inventory must document compliance with
 - Annual registration and reporting obligations, if applicable
 - Occupancy status and name of the most recent occupants
 - Household size and household income
 - Number of bedrooms and square footage
 - Evidence of compliance with the noticing requirements, and whether the occupant is eligible for and has opted in to being contacted about the right of first refusal.
- If a vacant unit has been occupied during the preceding five years, the Unit Inventory must fully describe the lawful process and timeline by which the unit became vacant.

17.122.060 – Unit Inventory (cont'd)

- Prior to issuance of a building permit, the Developer must prepare a first addendum to the Unit Inventory that reports on the status of each affected unit.
- Prior to issuance of a certificate of occupancy, the Developer must prepare a second addendum to the Unit Inventory that describes, for each qualifying prior occupant, compliance with the right of first refusal requirements.

Additional Sections

- 17.122.050 – Notice to Existing Occupants and Prospective Tenants
 - Between 30 and 60 days prior to submitting an application, the Developer must provide all existing occupants notice of the proposed application.
- 17.122.070 – Right of First Refusal
 - Occupants of Protected Units who were Lower Income Households have the right of first refusal to rent a new unit of Equivalent Size in the development affordable to their household income category.

Planning Commission Recommendation

The Planning Commission recommends that the City Council approve the proposed Planning Code amendment, adding Chapter 17.122 Replacement Housing Unit Regulations.

CED Recommendation

That the Ordinance be “Approved as Amended the Recommendation of Staff, and Forward to go before the * Concurrent Meeting of the Oakland Redevelopment Successor Agency and the City Council, to be heard 10/15/2024.”

Proposed Oakland Municipal Code Section 17.122.040.E. Be Amended To Add The Following:

“If In Any Circumstances The Developer Causes The Existing Occupants Of Any Protected Units That Are Lower Income Households To Relocate In A Manner That Does Not Obligate The Developer To Provide Relocation Payments Under Oakland Municipal Code Chapter 8.22 Or Chapter 15.60, The Developer Shall Comply With Any Obligation As Provided In California Government Code Section 66300.6, Subsection (B)(4)(A) To Provide Relocation Benefits Equivalent To The Relocation Benefits Required To Be Paid By Public Entities Pursuant To California Government Code Title 1, Division 7, Chapter 16 (Commencing With Section 7260).”

CED Recommendation

And A Request To Staff To Provide In A Supplemental Report The Incorporate Recommended Revisions Addressing Comments Received From East Bay Housing Organizations, Including The Following:

1. Incorporate The Right Of Occupants To Remain In Their Units Until Six Months Before The Start Of Construction Activities As Specified In California Government Code Section 66300.6(B)(3).
2. Revise The Definition Of “Protected Units” To Include Reference To The California Tenant Protection Act Of 2019 (Assembly Bill 1482).
3. Make A Clerical Revision Under Section 17.122.030.D. Regarding Reference To California Government Code Chapter 12.
4. Correct Inconsistency Under Section 17.122.050 Regarding The Notices Provided To Existing Occupants 30 Days Prior To Application Submittal And The Right Of First Refusal Effective On The Date Of Application Submittal

Revisions to Hearing Draft Based on CED Recommendations

- Added language introduced by CM Kalb
 - **17.122.040** – Clarify that the CA Government Code applies when OMC Chapter 8.22 (Residential Rent Adjustment and Evictions) does not.
- Added staff-drafted language to address EBHO comments
 - **17.122.020** – Clarify that units subject to the CA Tenant Protection Act are Protected Units
 - **17.122.030** – Clarify that the reference to CA Government Code Chapter 12 is specifically to Article 2
 - **17.122.050** – Add noticing requirements informing tenants of their rights under State Law and authorizing PBD to create noticing forms for use by Developers.

Environmental Determination

Each of the findings provide a separate and independent basis for clearance and collectively provide an overall basis for clearance.

- No further environmental review required following the certified General Plan Update - Phase 1 EIR.
- Exempt as a project consistent with the General Plan and zoning.
- Exempt as a general rule, with no significant effect on the environment.

Staff Recommendation

Staff Recommends That The City Council Conduct A Public Hearing And, Upon Conclusion, Adopt an Ordinance, As Recommended By The Community and Economic Development Committee:

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.