



November 22, 2021

Oakland City Council Community and Economic Development Committee Members
1 Frank H. Ogawa Plaza
2nd Floor
Oakland, CA 94612

Re: Demolition Protections - CED Agenda Item No. 21-0739

Dear Honorable Oakland City Council Members:

We are pleased that the City of Oakland is updating its local density bonus ordinance, However, doing so without strengthening the City's inadequate demolition protections is likely to result in the displacement of low-income tenants and loss of precious affordable and rent-stabilized housing stock in the event that existing housing is demolished.

We therefore call on you to adopt robust citywide demolition protections for all projects simultaneously with proposed updates to the city's density bonus ordinance.

In Oakland, a real estate developer can evict all tenants from a building in order to demolish the building and rebuild. Oakland landlords have threatened their tenants with demolition in order to circumvent rent control and other tenant protections. Although state law now provides some baseline controls on demolition and requirements for replacement units to be built, it does not go far enough to prevent loss of affordable housing capacity and ensure that displaced tenants have a meaningful right of return. As a result, until you take action, Oakland tenants and Oakland's affordable housing stock are not adequately protected from displacement and loss.

California's Housing Crisis Act (HCA or SB 330) explicitly authorizes localities to pass stronger demolition protections. Oakland has clear legal authority to pass an ordinance that "places restrictions on the demolition of residential dwelling units ... that are more protective of lower income households, requires the provision of a greater number of units affordable to lower income households, or that requires greater relocation assistance to displaced households."¹

Oakland should work urgently to pass an ordinance with stronger demolition controls for residential units. This ordinance should contain the following protections:

¹ Gov. Code § 66300(d)(3).

- Ensure that all affordable units are replaced at the same or deeper level of affordability and that affordable housing capacity is not diminished:
 - Require that replacement units include at least the same square footage as demolished units, in addition to the same number of bedrooms and bathrooms.
 - Require replacement units to correspond to lower AMI levels to match the neighborhood based on census data. For example, replacement units in a neighborhood with a lower median income may be required to be replaced at a 30% AMI level.
 - Require the definition of protected units that developers must replace with affordable housing to include units occupied by a low income household in the past five years, where if the income of a household is not known, it shall be rebuttably presumed that a lower income household occupied the unit.
 - Require that all tenants of replacement units shall have the same rights and privileges of other tenants in the same building or complex with respect to common space amenities, entry into the building, and building services, including access to laundry facilities, gardens or yards, health facilities and recreational space, property management and security services, repairs and maintenance, access to parking spaces, access to doors and keys, and building rules and regulations.

- Prevent landlords from demolishing units to circumvent tenant protections:
 - Prohibit developers from obtaining a demolition permit if there have been verified cases of tenant harassment or threatened or actual illegal eviction during the preceding three years.
 - Require developers to provide all existing residential tenants notice of the application to demolish the building no later than the date it is submitted to the City, including a statement of their rights.

- Allow all tenants to stay in their homes until construction is imminent:
 - Require developers who wish to demolish any residential units, not just protected units, to allow tenants to stay in their homes until 30 days before construction starts. Prevent demolitions where a developer failed to follow this requirement.

- Ensure housing stability following displacement due to demolition, regardless of the type of rental housing involved:
 - Require developers to pay displaced tenants a rent differential (covering the difference between what the tenant currently pays and market rent) for a comparable unit until permanent replacement housing is made available.
 - Require developers to prove payment of all required relocation expenses to displaced tenants

- o Require developers who wish to demolish occupied residential units to prepare a relocation plan that addresses the housing needs of all displaced tenants as a condition of project approval; the relocation plan must meet the following criteria:
 - Provide temporary comparable² replacement housing in Oakland, in the same neighborhood if possible, until new units are ready for occupancy.
 - Ensure no displaced tenant is paying more in rent for a replacement unit, and that the replacement housing is otherwise affordable to displaced tenants, following the model of 25 Cal. Code of Regulations, section 6008(c)(5).
 - Minimize inconvenience of the moving process for displaced tenants
 - Offer tenants the choice between temporary comparable replacement housing until the new units are ready for occupancy (including a rent differential, if necessary) or temporary relocation benefits.
- Ensure that all tenants can exercise their right to return:
 - o Require developers who wish to demolish any residential units to provide a right of first refusal for a comparable unit in the new development
 - Displaced tenants should have the right of first refusal to rent new comparable³ units designated to replace the units that were demolished, at the rent that would have applied if they had remained in place, as long as their tenancy continues.
 - Income restrictions should not apply to displaced tenants, except in cases where a developer has constructed a 100% affordable housing project.
- Track the impact of demolitions on displacement through reporting and data collection:
 - o Require the Oakland Planning & Building Department to provide annual reports to the public detailing the number of residential units demolished by address and parcel number, the number of tenants temporarily displaced, and the number of tenants permanently displaced.

We also recommend amending Oakland’s draft density bonus ordinance as follows:

- In Section 17.107.045(A), specify that “any other form of rent or price control” includes California’s anti-rent gouging protections under Civil Code § 1947.12 and Oakland’s Rent Adjustment Ordinance.
- In Section 17.107.045(D), create a process for ensuring that tenants displaced due to demolition for the purpose of developing new housing have received relocation assistance under the Uniform Relocation Ordinance.

² Define “comparable replacement dwelling” to include square footage and the same or greater number of bedrooms, consistent with 25 Cal. Code of Regulations, section 6008(c).

³ Define “comparable” in terms of square footage and the same or greater number of bedrooms.

Thank you for considering our proposal. We look forward to working with your staff to craft an ordinance that protects Oakland tenants at risk of displacement due to demolition and preserves much-needed affordable housing stock in Oakland.

Sincerely,

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