



AGENDA REPORT


TO: Jestin D. Johnson
City Administrator

FROM: Albert Merid
Acting Director, Planning
and Building Department

SUBJECT: SUPPLEMENTAL – Replacement
Housing Unit Regulations Ordinance

DATE: October 10, 2024

City Administrator Approval


Jestin Johnson (Oct 11, 2024 05:37 PDT)

Date:

Oct 11, 2024

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.**

REASON FOR SUPPLEMENTAL

This supplemental report provides modifications to the proposal to amend the Oakland Planning Code to add Chapter 17.122 Replacement Housing Unit Regulations. Specifically, the Community and Economic Development Committee (CED) of the City Council at their October 8, 2024 meeting forwarded the staff proposal to the City Council and directed staff to work with the Office of the City Attorney to craft language consistent with additional recommendations discussed at the CED meeting, which include the following;

- 1) The Committee recommended incorporating an amendment to section 17.122.040 – Replacement of Protected Units proposed by Councilmember Dan Kalb.
- 2) The Committee also directed staff to draft amendments to the proposed chapter addressing the letter from East Bay Housing Organizations (EBHO) dated October 8, 2024 (**Attachment A**), which addressed the following topics and chapter sections:
 - Inadequate Provisions for Relocation Assistance
 - Limitations on When Occupants Can be Required to Move
 - 17.122.020 – Definitions
 - 17.122.030 – Applicability
 - 17.122.040 – Replacement of Protected Units
 - 17.122.050 – Notice to Existing Occupants and Prospective Tenants

City Council
October 15, 2024

The proposed amendments address every recommendation except EBHO's request to define Affordable Housing in Section 17.122.040. This term is defined in Chapter 17.09 – Definitions, which provides definitions that apply to all of Title 17 – Planning Code, so anytime that the term affordable is used throughout Title 17 it refers to the existing definition in 17.09. It would be unreasonable to define this term in every applicable chapter in the code.

PROPOSED AMENDMENTS

Planning Code Text Amendments have been further revised to implement the direction of the CED Committee in its motion from October 8, 2024. Staff drafted and Councilmember Kalb's amendments per CED Committee direction are shown in underline for additions, there were no deletions. The amendments requested are to mainly cross reference and/or include State requirements for clarification purposes. The full amended Chapter 17.122 is attached as **Supplemental Legislation and Exhibit A**.

1. Subparagraph 1 of the definition of Protected Unit in Section 17.122.020 to read as follows:
A rental Dwelling Unit that is currently subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to Lower Income Households; is currently subject to any other form of rent or price control, including Oakland Municipal Code Section 8.22.010 *et seq.* and the California Tenant Protection Act of 2019, as subsequently amended; or was subject to the above in the five-year period preceding the submittal of an application for development approvals, regardless of whether the unit has been vacated or demolished.
2. Section 17.122.030(D) to read as follows:
Where a conflict exists between the requirements in this Chapter and the applicable requirements contained in California Government Code Title 7, Division 1, Chapter 12, Article 2 (Section 66300.5 et seq.), the applicable requirements of this Chapter shall prevail unless otherwise declared preempted by a court of competent jurisdiction.
3. Section 17.122.040(E) to read as follows:
For any unit that the Developer proposes to Replace, the Developer shall comply with all applicable requirements of Chapter 8.22, Residential Rent Adjustment and Evictions, including but not limited to, relocation assistance and registration and reporting obligations under Section 8.22.510. Where the provisions of State law provide the right to evict existing occupants, the Developer must comply with the following provisions:
 1. 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).

2. A Developer shall comply with provisions of Government Code Section 66300.6, subsection (b)(3) to allow any existing occupant to occupy their units until six months or less before the start of construction activities; to provide notice at least six months in advance of the date that existing occupants must vacate; and to allow existing occupants who were required to leave to return to their unit at their prior rental rate if the demolition does not proceed and the property is returned to the rental market. This subsection does not serve to create a new just cause for eviction, does not waive the developer's obligation to comply with all applicable requirements of Chapter 8.22, and does not compel an occupant to remain in the unit until six months before the start of construction activities. In any circumstances where the Developer provides such notice, the notice shall also state that the notice does not serve as an eviction notice. A Developer who enters into a Move Out Agreement consistent with Article VI of Chapter 8.22 with an occupant is not subject to this requirement since the occupant is not being compelled to move out.

4. Section 17.122.050 to read as follows:

If any Protected Unit in a building subject to a proposal for the Demolition of Protected Units is occupied thirty (30) days prior to the submittal of an application for development, the following requirements shall apply. If a rental agreement was negotiated in a language other than English, all required written notices referred to in this section must be issued in that language and in English. For each application, all documents referred to in this section shall be reviewed by the Planning and Building Department as to form, correctness, and completeness. The Planning and Building Department may create forms to assist Developers in providing this notice, in which case the Developer shall use the form created. If the documents provided do not meet the requirements of this section, including if the documents were dated fewer than thirty (30) days ago, the Planning and Building Department shall ministerially reject the application without prejudice for the Developer to resubmit after adequate and compliant thirty- (30) day notice is provided.

5. Add the following subparagraphs to Section 17.122.050(A):

6. Information regarding the existing occupants rights pursuant to Section 17.122.040(E), if applicable.

7. Information on how the occupant can contact the City in the event that their contact information changes.

8. Notice that the owner will inform the occupant of the filing for an application for development at the time that the application for development is filed, and a clear

statement that if the occupant moves out before the application for development is filed, that they will be ineligible for the right of first refusal.

6. Add the following subparagraphs to Section 17.122.050(B):

6. Information regarding the existing occupants rights pursuant to Section 17.122.040(E), if applicable.

7. Information on how the occupant can contact the City in the event that their contact information changes.

8. Notice that the owner will inform the occupant of the filing for an application for development at the time that the application for development is filed, and a clear statement that if the occupant moves out before the application for development is filed, that they will be ineligible for the right of first refusal.

7. Add Section 17.122.050(C), reading as follows:

The Developer shall subsequently notify all persons who received notice under Subsections A and B above of the filing for an application for development within seven (7) days of the filing of the application for development.

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 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.

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

Respectfully submitted,

Albert Merid

ALBERT MERID
Acting Director, Planning and Building Dept

Reviewed by:

Laura Kaminski, Strategic Planning Manager,
Bureau of Planning

Prepared by:

Timothy Green, Planner II
Strategic Planning, Bureau of Planning

Attachments (1):

A. EBHO Letter Dated October 8, 2024

**EBHO Comments and Recommendations on
Proposed City of Oakland Replacement Housing Regulations
October 8, 2024**

Inadequate Provisions for Relocation Assistance

Section 66300.6(4) of the Housing Crisis Act provides that existing occupants of protected units that are lower income households must be provided with relocation benefits equivalent to the amount of relocation benefits required to be paid by public entities pursuant to the California Relocation Assistance Act (Government Code Section 7260, et seq.)

While the proposed ordinance requires compliance with the relocation payment requirements of Section 8.22 of the Municipal Code, this provision alone may be insufficient either because there may be Protected Units under the ordinance that are not covered by the Municipal Code provisions, or because the Relocation Assistance Act requires payments in amounts greater than required by the Municipal Code.

The proposed ordinance should be amended to include the requirement to pay benefit amounts applicable under either Section 8.22 of the Municipal Code or the California Relocation Assistance Act, whichever is greater.

Limitations on When Occupants Can be Required to Move

Section 66300.6(3) of the Housing Crisis Act requires all the following:

- Existing occupants have the right to occupy their units until six months before the start of construction.
- Developers must provide occupants with notice of the date they must vacate the unit, and such notice must be provided at least six months in advance of that date.
- Any existing occupants that are required to leave their units must be allowed to return at their prior rental rate if the property is the demolition does not proceed and the property is returned to the rental market.

The ordinance should clearly include all these requirements.

Page 7, Section 17.122.020 Definitions

The definition of “Protected Unit” in subparagraph 1 refers to units that are “subject to any other form of rent or price control, including Oakland Municipal Code Section 8.22.010”. Please clarify that this includes units covered by the California Tenant Protection Act of 2019 (AB 1482), even if not covered by the Rent Adjustment Ordinance.

Page 8, Section 17.122.030. Applicability

In paragraph D, the reference to Government Code Chapter 12 is not clear and appears to be incomplete. We believe this should refer to “Chapter 12 of Division 1 of Title 7 of the California Government Code, beginning with Section 66300.5” (this is the section of the Housing Crisis Act amended by AB 1218).

Page 9, Section 17.122.040 Replacement of Protected Units

In Paragraph B, we would like to verify that use of the term “Affordable Housing” has the meaning specified in Section 17.09.040 of the Planning Code, including the requirement that Replacement Deed-Restricted Units must have income and affordability restrictions for 55 years in the case of rental units and 45 years in the case of for-sale units.

Pages 11-12, Section 17.122.050 Notice to Existing Occupants and Prospective Tenants

This section includes requirements for written notice to existing occupants and prospective tenants advising them of their rights under the ordinance, including a right of first refusal under Section 17.122.070. However, there is an inconsistency between the notice requirements and the right of first refusal.

Section 17.122.050 requires that these notices be provided to existing occupants at least 30 days prior to submission of an application for development on the site, and subsequently to all prospective tenants. However, Section 17.122.070 states that the right of first refusal only applies to tenants who were in possession of the Protected Unit on the date the application for development is submitted to the Planning and Building Department. These leaves a gap between when the notices must be served and when the right of first refusal is triggered. Occupants that move out prior to the submission of the application would not be eligible.

We recommend that either (a) the eligibility date for the right of first refusal be the date on which the notice is served, or (b) that the notice clearly states that tenants that move out before the application is served will be ineligible for the right of first refusal. Property owners (or the City, based on information provided in the Unit Inventory) should be required to notify occupants when the application has been submitted.

In addition, the notice requirements provide for occupants to furnish to the Developer contact information so they can be advised when replacement units are available for occupancy. The ordinance should also require Developers to provide occupants with information on how to contact the City in the event their contact information changes, since the City will be maintaining the list of contact information (Section 17.122.070.C).