

SB 330 Director's Letter

INTRODUCTION

Effective January 1, 2020, as further amended in 2021, "The Housing Crisis Act of 2019," (HCA) establishes a statewide "housing emergency" until at least January 1, 2030, during which time certain restrictions on new housing development are to be suspended, and certain permitting is to be expedited. This Director's Letter provides guidance on certain aspects of the City of San Jose's (City) application of the HCA requirements, along with an FAQ to assist developers.

OVERVIEW

The HCA generally prohibits zoning changes or new development standards that would reduce the capacity for housing. Cities may only approve demolition of existing housing units if the new development will create at least as many new units (No Net Loss). Additionally, if certain Protected Units are to be demolished, they must be replaced by units that meet specific conditions related to affordability and tenant protections, under a process called a Replacement Unit Determination (RUD). This applies to all "housing development projects" consisting of one or more residential units (as well as other types of mixed-use projects). Non-residential projects are not subject to the HCA and may be approved, disapproved, or subject to conditions of approval in accordance with existing local requirements.

REPLACEMENT UNIT DETERMINATION

The HCA requires housing projects that will demolish one or more existing residential units to create at least as many units as demolished. If the building at the project site was demolished within the five years prior to submission of the development application, the new project must provide at least the maximum number of units at the building site within that five-year period.

If the project demolishes "Protected Units," special conditions apply. Protected Units include those that, within the 5 years prior to submission of the development application, are:

1. subject to a deed-restricted covenant of affordability to households earning below 80 percent of Area Median Income (AMI); or
2. subject to a local rent control program; or
3. rented by low-income households earning below 80 percent of AMI; or
4. withdrawn from the rental market under the Ellis Act within 10 years prior to submission.

Except in limited circumstances, any housing development project that would demolish any Protected Units shall, as a condition of approval, replace those units with the same number of

bedrooms, and at an affordable rent or sales price to households of the same or lower income category as that of the last household in occupancy. Such rental units shall remain under the affordability restriction for a period of at least 55 years.

PRELIMINARY REVIEW

Prior to the submission of a Planning Application, the Planning Department will make every effort to identify projects that are likely to have replacement unit and/or relocation requirements and encourage applicants to engage in a Preliminary Review with the Housing Department in order to better anticipate the likely costs associated with replacement units and tenant relocation benefits.

REPLACEMENT UNIT DETERMINATION APPLICATION

All projects that involve the demolition of one or more residential housing units require a Replacement Unit Determination (RUD) Application. Applicants must pay a flat fee per demolished unit to cover the costs of an initial Relocation Assessment and RUD. The Housing Department will initiate the RUD process only after receiving a complete RUD Application and the required fee.

RELOCATION ASSESSMENT

The initial Relocation Assessment will be conducted by a Relocation Contractor. This Contractor is responsible for working with the Applicant and Tenants to collect tenant income information and any additional information necessary to evaluate eligibility for benefits. The Contractor will draft a Relocation Plan for each project, including an estimate of likely relocation costs.

RUD REPORT

Housing Department staff will utilize the tenant income information to complete the RUD Report, which will include the number and type of Protected Units that must be replaced, along with any required income restrictions for those Replacement Units. Staff will provide Applicants with a Determination Letter that includes the Relocation Plan and the RUD Report. These terms, and any additional fees owed for further relocation assistance, will be included as Conditions of Approval for the project.

WHEN TENANT INCOME CANNOT BE DETERMINED

Where the Contractor cannot determine the income of the current or previous tenants, Replacement Units shall be provided as affordable to Very-Low (earning up to 50% AMI) and Low-Income households (earning between 50% and 80% of AMI), in an amount proportional to the representation of such lower-income households based on current Comprehensive Housing Affordability Strategy (CHAS) data, as provided by the Department of Housing and Urban Development (HUD).

These percentages will apply to units where tenant income is unknown or are vacant, with the remainder presumed to be Above Low-Income. Any fractional units will be rounded up to whole numbers. The presumed Protected Unit totals for each income category will then be allocated between bedroom sizes in proportion to the distribution unit types at the project where tenant income is unknown or that are vacant. The most recent CHAS data can be found here: <https://www.huduser.gov/portal/datasets/cp.html>

TENANTS RIGHTS AND BENEFITS

Right to Remain.

All households residing in a Protected Unit proposed to be demolished shall have the right to remain in the unit until 6 months before the start of construction.

Relocation Benefits.

Lower income households residing in a Protected Unit proposed to be demolished shall be entitled to relocation benefits pursuant to state law. [See 25 CCR 6038].

Right of First Refusal.

Lower income households residing in a Protected Unit proposed to be demolished shall have the right of first refusal to a comparable unit in the new housing development, at a rent or sales price affordable to their household income level (or lower), with at least the same number of bedrooms (except when the new development project is a single residential unit, a single family home, or a 100% affordable housing project).

Right to Return.

All households residing in a Protected Unit proposed to be demolished shall have the right to return to their unit if demolition does not proceed and units are returned to the rental market.



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FREQUENTLY ASKED QUESTIONS (FAQ)

1. What does No Net Loss mean?

No Net Loss means that each jurisdiction must ensure that at least one new unit of residential housing is created for every unit that is demolished, such that there is no decrease in the local housing inventory. The No Net Loss policy in the Housing Crisis Act (HCA) applies to all units in all housing development projects.

2. What types of projects are subject to the HCA?

The HCA applies to all housing development projects, defined as: (1) a development project consisting of one or more residential units, (2) a mixed-use development project where at least two-thirds of the square footage comprises residential uses, or (3) transitional or supportive housing development. Projects that do not include residential units are not subject to the HCA and may be approved, disapproved, or subject to conditions of approval in accordance with existing local policy.

3. Does the HCA apply to units that are unpermitted or unauthorized?

Yes. Such units are counted towards the total number of units that must be created. If these units meet any of the criteria for Protected Units, they must be replaced according to those requirements.

4. How will the City apply the CHAS data in determining equivalent (bedroom) size requirements for replacement units?

To apply the CHAS to the vacant units, the City will multiply the total number of units for which the income of the current or most recent tenant is unknown by CHAS income shares to determine the presumed number of Very Low Income and Low Income Protected Units. Any fractional units will be rounded up to whole numbers. The presumed Protected Unit totals for each income category will then be allocated between bedroom sizes in proportion to the distribution of sizes of units with unknown tenant income.

5. Does this law apply to single-family homes?

The HCA was amended by SB 8 (2021) to apply to single-family homes. If a single-family home was rented by a lower-income household within five years preceding the date of the application, then the single-family home is considered a protected unit. There are some policies that only apply to single-family homes in specific circumstances:

- If a housing development project will demolish a single-family home that is currently occupied by a lower-income household and construct a new single-family home, the developer must provide relocation benefits to the tenant household but are not required to offer a right of first refusal for the new single-family home. The new single-family home may be provided at any size and at any income level.
 - If the housing development project will demolish a single-family home that is currently occupied by a lower-income household and construct a new building with two or more units, all replacement, relocation, and right of first refusal requirements apply.
 - If the housing development project will demolish a protected single-family home with three or fewer bedrooms, the replacement unit must include the same number of bedrooms. If the protected single-family home contained four or more bedrooms, then the replacement unit must include at least three bedrooms. The replacement unit is not required to have the same or similar square footage or the same number of total rooms.
6. *Why does the City need to know whether a Certificate of Occupancy for the units being demolished was issued prior to September 7, 1979?*

Under the HCA, it is presumed that any multifamily building constructed prior to September 7, 1979 is subject to the [San Jose Apartment Rent Ordinance](#) (“rent stabilization”). All units subject to rent stabilization are considered Protected Units and must be replaced with income restricted units. The income categories of replacement units will be determined by the incomes of current or the most recent tenants.

7. *Why do I have to provide a grant deed and title report?*

A grant deed and preliminary title report are required for all new projects subject to the HCA in order to verify that the developer/applicant has legal authority to seek such permitting and to determine whether the property has any existing affordability covenants.