

## **Proposed City of Oakland Replacement Housing Unit Regulations Ordinance**

The following are the Planning Code amendments proposed by staff, proposal to add Chapter 17.122 to the Oakland Planning Code. The proposal is comprised only of additions, which are shown in underline.

### **17.122.010 – Title and purpose**

A. Title. This Chapter shall be referred to as the City of Oakland Replacement Housing Unit Regulations.

B. Purpose. This chapter establishes City of Oakland implementation of Article 2 of the Housing Crisis Act, California Government Code Section 66300.5 et sequitur.

### **17.122.020 - Definitions.**

For purposes of this Chapter only, the following definitions shall apply:

“Developer.” Developer shall mean the owner or owner’s authorized agent, or other person, including a lessee, having the right under the Oakland Zoning Regulations, to make an application for development. It shall also include any successor in interest thereto.

“Demolition of Protected Units.” Demolition of Protected Units means any action that results in the elimination of, or reduction in the number of bedrooms in, one or more existing Protected Units, including but not limited to the razing, tearing down or wrecking of any facility, structure or building, the conversion of existing Protected Units into non-residential uses, the conversion of existing Protected Units into unprotected Dwelling Units, and subdivisions through existing structures that would place each existing Protected Unit on separate parcels. Notwithstanding the above, applications for condominium conversion in the City of Oakland shall be regulated pursuant to Oakland Municipal Code Chapter 16.36 in lieu of compliance with this Chapter.

"Equivalent Size." Equivalent Size means that each Replacement Deed-Restricted Units contains at least the same number of bedrooms as the Dwelling Unit being Replaced. Replacement Deed-Restricted Units in newly constructed buildings must also contain at least ninety (90) percent of the square footage of the Dwelling Unit being Replaced.

“Protected Unit.” Protected Unit is defined as a Dwelling Unit, regardless of condition or zoning status, that meets any of the following:

1. 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.; 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. A rental Dwelling Unit that is occupied by a Lower Income Household or was occupied by a Lower Income Household in the five year-period preceding the submittal of

an application for development approvals, regardless of whether the unit has been vacated or demolished;

3. A rental Dwelling Unit that has been withdrawn from rent or lease pursuant to the Ellis Act, Government Code Section 7060 et seq. in the ten-year period preceding the submittal of an application for development approvals.

“Replacement Deed-Restricted Unit” Replacement Deed-Restricted Unit means a dwelling unit that fulfills the obligation to Replace, as defined in Section 17.122.040, a Protected Unit.

### **17.122.030 - Applicability**

A. The requirements of this Chapter shall apply to any development project that is proposed on any property that includes a parcel or parcels on which a dwelling unit is located or was located in the ten years preceding application submittal.

B. Notwithstanding the above, this Chapter shall not apply to a development project proposed on a property that includes a parcel or parcels on which a dwelling unit is located, or was located, in the ten years preceding application submittal only if all of the following conditions exist:

1. The development project proposes an Industrial Activity.

2. The property is entirely within a zone that does not allow Residential Activities.

3. The zoning applicable to the property that does not allow Residential Activities was adopted prior to January 1, 2022.

4. The dwelling units that are or were located on the property are not Work/Live units.

5. The dwelling units that are or were located on the property are or were unpermitted.

C. A development project that is proposed to legalize unpermitted units that are subject to a code enforcement action may exceed the maximum allowable density of the applicable zoning designation but must still comply with this Chapter and Chapter 8.22, as applicable and are subject to the following:

1. All units that are in excess of the maximum allowable density, with exception of units received pursuant to the Density Bonus Ordinance (Chapter 17.107), shall be deed restricted and made available to low-income households for fifty-five (55) years or the life of the project, whichever is longer.

2. The previously unpermitted units shall remain rent controlled if the units were previously subject to rent control and the units shall be treated as Replacement Deed-Restricted Units if the project includes Demolition of Protected Units. The Developer shall comply with the Just Cause for Eviction Ordinance.

3. The project must comply with all code requirements, including but not limited to the requirement for a building permit and compliance with the building code, 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. The City may deny the waiver request if the City makes a finding that denying the waiver is necessary to protect the health and safety of the public or occupants of the structure.

4. This right shall never be used more than one time per parcel.

5. Notwithstanding the above, this subsection C shall not preclude an applicant from applying for a Rezoning or Variance.

D. Where a conflict exists between the requirements in this Chapter and the applicable requirements contained in California Government Code Chapter 12, the applicable requirements of this Chapter shall prevail unless otherwise declared preempted by a court of competent jurisdiction.

E. This Chapter does not confer additional legal protections upon an unlawful occupant of a Protected Unit.

F. The right of first refusal described in Section 17.122.070 does not apply to an occupant of a short-term residential rental that is rented for a period of fewer than 30 days.

### **17.122.035 – Restrictions**

A. Demolition of dwelling units, whether or not Protected Units, shall be prohibited in the following circumstances:

1. The demolition is proposed in furtherance of a housing development project that creates fewer dwelling units than the greatest number of dwelling units that existed on the project site within the last five years.

2. There have been any adjudicated cases evidencing tenant harassment or illegal eviction during the application process prior to the issuance of the demolition or building permit or during the five-year period prior to application submittal.

3. A prior entitlement at the project site was denied or voided within the past five years based on documentation in the Unit Inventory, prepared pursuant to Section 17.122.060, that a unit became vacant by unlawful means.

### **17.122.040 - Replacement of Protected Units.**

A. The City shall not approve any demolition permit, building permit, or land use entitlement issued under these Zoning Regulations, including any change of use that requires a zoning clearance, for a development project that proposes the Demolition of Protected Units unless the development project Replaces all Protected Units, the Developer provides notice in compliance with Section 17.122.050, the Developer includes with their application a Unit Inventory in compliance with Section 17.122.060, the Developer commits to providing rights of first refusal

to occupants of Protected Units in compliance with Section 17.122.070, and the proposal otherwise fully complies with this Chapter.

B. For purposes of this Chapter only, "Replace" shall mean either of the following:

1. If any Protected Units have been occupied at any time during the five-year period preceding the date of application, the proposed development shall include residential uses that provide at least the same number of units as those demolished as part of the Demolition of Protected Units, of Equivalent Size, to be made available as Affordable Housing occupied by persons and families in the same or lower income category as those households currently or last in occupancy of the Protected Units. If the income category of the current or last household in occupancy is not known, it shall be rebuttably presumed Lower Income Households occupied these units in the same proportion of Lower Income renter households to all renter households within the City of Oakland, as determined using the most recently available data for renter income distribution in the City of Oakland from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database.

2. If all Protected Units have been vacated or demolished within the five-year period preceding the date of application, the proposed development shall include residential uses that provide at least the same number of Dwelling Units of Equivalent Size as existed at the highpoint of those Dwelling Units in the five-year period preceding the application to be made available as Affordable Housing occupied by persons and families in the same or lower income category as those persons and families in occupancy at that time. If the income category of the current or last household in occupancy is not known, it shall be rebuttably presumed Low Income and Very Low Income Households occupied these units in the same proportion of Low Income and Very Low Income renter households to all renter households within the City of Oakland, as determined using the most recently available data for renter income distribution in the City of Oakland from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database.

3. For any Protected Unit that is or was subject to any other form of rent or price control within the five-year period preceding the application and was last occupied by persons or families above lower income (or was presumed to be occupied by persons or families above lower income using the formulas provided in paragraphs 1 and 2), the Replacement Deed-Restricted Unit must be made available at affordable rent or affordable housing cost to, and occupied by, low-income persons or families.

C. All Replacement Deed-Restricted Unit calculations resulting in fractional units shall be rounded up to the next whole number.

D. Documentation of a legally binding commitment, recorded against the property, to construct Replacement Deed-Restricted Units in accordance with this Chapter shall be a required condition prior to issuance of any demolition, grading, or building permit.

E. 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.

F. If the Developer is proposing a non-residential project, the Developer shall demonstrate that they have acquired sufficient Replacement Unit Rights as part of their development application.

1. “Replacement Unit Rights” are generated by a project which adds housing units to the City’s housing supply, and one (1) Replacement Unit Right is equivalent to one (1) housing unit within such a project.

2. Replacement Unit Rights may be generated by a separate project either undertaken by the Developer or undertaken by others from whom the Developer has obtained or acquired such “rights” in a legally binding manner by a recorded document to be approved by the City.

3. A project generating Replacement Unit Rights must be located within the City of Oakland.

4. Once the Replacement Deed-Restricted Units have been developed or secured, a regulatory agreement that restricts the appropriate number, size and affordability levels of Replacement Deed-Restricted Units must be approved by the City and recorded on the housing development prior to issuance of the first construction-related permit for the non-residential project. Where the project is changing the use from residential without associated construction, the regulatory agreement must be recorded before the City will issue the Planning approval for the change of use. At the time of issuance of the construction-related permit or change of use permit for the non-residential project, the replacement housing must be under construction or completed within the last twelve (12) months and the Developer must have (a) recorded the required regulatory agreement approved by the City and (b) provided a signed agreement that any existing occupants will be provided the right of first refusal in the new development in accordance with the requirements of this chapter.

5. The Replacement Deed-Restricted Units provided through Replacement Unit Rights must otherwise meet the affordability and Equivalent Size requirements specified in this section and shall be subject to the right of first refusal provisions provided in Section 17.122.070.

6. No Replacement Unit Rights shall be generated by a project or specific parts of a project which: (a) are intended to become the property of the Oakland Housing Authority, (b) receive financial assistance from the City or the Oakland Redevelopment Successor Agency, or (c) are located on property that was purchased or leased from a public or quasi-public agency.

**17.122.050 – Notice to Existing Occupants and Prospective Tenants.**

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. 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.

- A. Preliminary Notice to Existing Occupants Prior to Filing an Application for Development. At least thirty (30) days prior to submitting an application for development, and not more than sixty (60) days prior, the Developer shall provide all existing occupants of the building notice of the proposed application for development. Notice shall be given by posting in a conspicuous place outside the premises of the subject unit involved in the proposed application. Notice shall also be given by mail to the existing occupants and shall be deemed satisfied if it complies with the legal requirements for service by mail pursuant to California Code of Civil Procedure Section 1013. The application for development shall include documentation that the existing occupant notice requirements were met. The notice shall include the following:
1. Notice of the owner’s plans to file an application to redevelop the property.
  2. Information on how the occupants’ existing unit will be affected by the development.
  3. The following language in at least fourteen (14) point bold face type: “**This notice is not an eviction notice. It is not a notice that you must leave the building or that your tenancy is being ended.**”
  4. Notice of the fact that as part of the process to redevelop the property, the property owner may offer an incentive to the occupant to move, such as a monetary payment or alternative housing options, that the occupant is not required to agree to move, and that the City of Oakland has a Tenant Move Out Agreement Ordinance, with a link to that Ordinance (currently Article VI of Chapter 8.22 of the Oakland Municipal Code).
  5. Information on the right of first refusal provisions under Section 17.122.070 including notice that the occupants may be entitled to a right of first refusal; information on the income threshold for lower income households to qualify for the right of first refusal; a signature line for acknowledgement of the right of first refusal, a checkbox option for opting in to the right of first refusal, and contact information to be used for purposes of the right of first refusal. Contact information shall include an email address. If an occupant does not have an email address, contact information shall include a phone number for the occupant of the unit proposed to be demolished.

- B. Notice to Prospective Tenants. Commencing at a date not less than thirty (30) days prior to the submittal of an application for development, the Developer shall give notice to each person applying after such date for rental of a Dwelling Unit in the building. This notice must be provided to the prospective tenant prior to the acceptance of any rent or deposit from the prospective tenant and prior to the execution of any rental agreement.

The notice shall include the following:

1. Notice of the owner’s filing or plans to file an application to redevelop the property.
2. Information on how the existing unit proposed to be let to the prospective tenant will be affected by the development.
3. Notice of the fact that as part of the process to redevelop the property the property owner may offer an incentive to the tenant to move, such as a monetary payment or alternative housing options, that the prospective tenant is not required to agree to move, and that the City of Oakland has a Tenant Move Out Agreement Ordinance, with a link to that Ordinance (currently Article VI of Chapter 8.22 of the Oakland Municipal Code).
4. Information on the right of first refusal provisions under Section 17.122.070 including notice that the prospective tenant may be entitled to a right of first refusal; information on the income threshold for lower income households to qualify for the right of first refusal; a signature line for acknowledgement of the right of first refusal, a checkbox option for opting in to the right of first refusal, and contact information to be used for purposes of the right of first refusal.
5. Contact information shall include an email address. If an occupant does not have an email address, contact information shall include a phone number for the occupant of the unit proposed to be demolished.

#### **17.122.060. Unit Inventory.**

- A. As part of the application submittal, the Developer shall submit a Unit Inventory that accounts for all Dwelling Units, including any unpermitted units, that are proposed to be affected by the proposal. For each affected Dwelling Unit in the building(s), the Unit Inventory must show compliance with the annual registration and reporting obligations under Section 8.22.510, if applicable, and must state the occupancy status as of the date of application, the name of the current or most recent occupants, the household size, the household income of the current or most recent occupants, or statement that such household income is not known and could not be determined after making good faith efforts to determine the household income, number of bedrooms and square footage of the unit, evidence of compliance with the noticing requirements described in Section 17.122.050, and information for each unit on whether the occupant is eligible for and has opted in to being contacted about the right of first refusal upon completion of the development. If the occupant is eligible and has opted in to being contacted, the Unit Inventory shall include the contact information provided by the occupant.

1. If a vacant Dwelling Unit has been occupied at any time during the five-year period preceding the submittal of the application, the Unit Inventory shall fully describe the lawful process and timeline by which the Dwelling Unit became vacant. If the Unit Inventory documents an unlawful process by which the unit became vacant during the five-year period, or the applicant fails to provide documentation listed under Section 17.122.060.E to show that all previously occupied units became vacant by lawful means, the permit application shall be denied. Notwithstanding the above, a Developer shall be excused of the requirement to document the process by which a unit became vacant if they establish, through evidence submitted with the Unit Inventory, that the Dwelling Unit at issue was vacant at the time that the Developer purchased the property and that they have undertaken good faith but unsuccessful efforts to gather information about the prior tenant from the previous owner.
  2. If a Dwelling Unit is occupied, the Unit Inventory must include a statement acknowledging that the desire to redevelop the property is not a just cause for eviction of that Dwelling Unit under the City of Oakland Just Cause Ordinance and acknowledging that causing a unit to become vacant by unlawful means shall be a basis for voiding the entitlement and denial of the demolition permit, grading permit, and/or building permit.
- B. Prior to issuance of a demolition permit, grading permit, or building permit, the Developer shall prepare a first addendum to the Unit Inventory that reports on the status of each affected Dwelling Unit in the building(s). The first addendum shall list the last time each Dwelling Unit was occupied, and the monthly rental price last charged for the Dwelling Unit. For each Dwelling Unit previously reported in the Unit Inventory as occupied, the Developer shall provide substantial evidence and affirm that the Dwelling Unit is vacant in compliance with applicable laws, such as Oakland Municipal Code Section 8.22.300 *et seq.*, Oakland Municipal Code Section 8.22.400 *et seq.*, and/or and state law. If the Unit Inventory documents that a unit has become vacant by unlawful means, or the applicant fails to provide documentation listed under Section 17.122.060.E to show that all previously occupied units became vacant by lawful means, the demolition permit, grading permit, and/or building permit shall be denied and the entitlement shall be voided. The entitlement shall include a condition of approval consistent with this paragraph.
- C. Prior to issuance of a temporary certificate of occupancy or certificate of occupancy, the Developer shall prepare a second addendum to the Unit Inventory that describes, for each qualifying prior occupant, compliance with the right of first refusal requirements, as applicable, as further described in Section 17.122.070.
- D. It shall be a violation of this Chapter to include false information on a submitted Unit Inventory or addenda thereto, subject to remedies provided under Section 17.122.080. Submittal of false information for each unit shall constitute a separate violation.
- E. In submitting Unit Inventories and addenda thereto, the Developer shall provide the following:



1. For each Dwelling Unit where Developer asserts the occupant vacated the Dwelling Unit pursuant to a valid termination notice that complies with the Oakland Just Cause for Eviction Ordinance, Oakland Municipal Code Section 8.22.300 et seq., documentation of all notices terminating tenancy and accompanying materials issued to the occupant.
2. For each Dwelling Unit where Developer asserts the occupant vacated the Dwelling Unit pursuant to a valid termination notice that complies with Oakland Municipal Code Section 8.22.400 et seq. (Ellis Act Ordinance), documentation of the notice to Rent Adjustment Program of intent to withdraw and all notices terminating tenancy and accompanying materials issued to the occupant.
3. For each Dwelling Unit where Developer asserts the occupant vacated the Dwelling Unit pursuant to an agreement that fully complies with the Oakland Tenant Move Out Agreement Ordinance, Oakland Municipal Code Section 8.22.700 et seq., evidence that the Developer has filed with the Rent Adjustment Program a Property Owner Certification prior to entering Move Out negotiations, and an executed Move-Out Agreement.
4. For each Dwelling Unit where Developer asserts the occupant voluntarily vacated the Dwelling Unit with no undue pressure, coercion, harassment, or misrepresentations of law or fact from the landlord or their agent, a certification under penalty of perjury with a description of the means by which the occupant vacated the unit along with any supporting documentation including correspondence from the occupant.
5. If any relocation payments were required under any article of Oakland Municipal Code Chapter 8.22, or if any relocation payments were voluntarily provided, a description and documentation of such relocation payments.

**17.122.070 –Right of First Refusal.**

- A. Upon completion of the Replacement Deed-Restricted Units, occupants of Protected Units who were Lower Income Households in possession of the Protected Unit on the date the application to develop was submitted to the Planning and Building Department shall have the right of first refusal to rent a new Dwelling Unit of Equivalent Size in the housing development affordable to the household at an Affordable Rent for the Lower Income category which corresponds to their income or, if the new units are sold, at an Affordable Housing Cost.
  1. This subparagraph shall not apply if the development project involving the Demolition of Protected Units consists of a single residential unit located on a site with a single Protected Unit.

2. A household that is otherwise eligible for the right of first refusal under this subsection A may be required to certify their household income and fulfill other eligibility requirements. If the household is no longer eligible because of an increase in household income, the developer shall not be excused of the obligation under this Chapter and under the executed regulatory agreement to make the unit available to a lower income household. If the completed project includes a deed-restricted moderate-income unit for which the household is eligible, the developer shall extend the right of first refusal to the household for that moderate-income unit. Otherwise, the developer shall offer a unit at market rent or market price to that household who holds a right of first refusal but who is no longer eligible for an affordable unit.
  3. An occupant who agreed to enter into a move out agreement and who otherwise is entitled to a right of first refusal pursuant to this Chapter shall remain entitled to the right of first refusal.
- B. In cases where a Developer has constructed a housing development in which 100 percent of the Dwelling Units, exclusive of manager’s units, are reserved for Lower Income households, occupants of Protected Units who were in possession at the date the application to develop was submitted to the Planning and Building Department shall be granted a right of first refusal for a unit at the newly constructed building subject to their ability to meet income qualifications and other applicable eligibility requirements when the new Dwelling Units are ready for occupancy. However, in no case shall a returning occupant with a right of first refusal be denied a Replacement Deed-Restricted Unit because their household income is too low to qualify or because the occupant fails to meet eligibility criteria based on immigration status.
- C. Where an occupant has a right of first refusal pursuant to this section, the Developer shall notify the occupant at least sixty (60) days in advance of the issuance of a temporary certificate of occupancy or certificate of occupancy for the building in which the unit is located. The City shall provide the list of contact information based on information provided by prior occupants as included in the Unit Inventory, the addenda thereto, and any additional contact information received by the City, if any.

The notice must include the following information:

1. The fact that the new units have been completed.
2. Information on the square footage and number of bedrooms in the unit being made available.
3. Information on whether units are available for rent or for purchase.
4. Information on the former occupant’s entitlement to reoccupy the building based on the household income status.
5. A table listing income thresholds and the rent or purchase price not to exceed based on household size.
6. Notice that if the occupant wishes to claim a unit in the new building, that they must reply within thirty (30) days of receipt of the notice.

7. If available for rent, notice that if the prior occupant chooses to claim a new unit for rent, it will be held for the prior occupant for sixty (60) days from the date of reply.
  8. If available for purchase, notice that if the prior occupant chooses to claim a new unit for purchase, they must enter into a contract for purchase no later than ninety (90) days after the sales program begins.
- D. In the case of rental of a new Dwelling Unit, within thirty (30) days of receipt of the notice of availability, a prior occupant must notify the prospective landlord if they wish to rent the new Dwelling Unit. The landlord must hold the Dwelling Unit vacant at no cost to the prior occupant for sixty (60) days from the date the prior occupant's written notice of its intent to reoccupy the rental unit is received. The lease agreement for the new rental unit shall contain substantially the same terms as the lease for the Protected Unit, except where otherwise required by law.
- E. In the case of a prior occupant's purchase of a new Dwelling Unit, the prior occupant shall have the option to purchase a new Dwelling Unit at an Affordable Housing Cost for the lower income category which corresponds to their income and upon the same or more favorable terms and conditions that such Dwelling Units are initially offered to the general public. Such right shall run for at least ninety (90) days from the date the sales program begins so long as the prior occupant is notified of their right to purchase in accordance with this section.

### **17.122.080 – Remedies**

A. Administrative Remedies.

1. Administrative Citation. Any person violating any provision or failing to comply with any requirements of this Chapter may be assessed an administrative citation pursuant to O.M.C. Chapter 1.12 for the first offense.

2. Administrative Civil Penalties. Any person violating any provision or failing to comply with any requirements of this Chapter multiple times may be assessed a civil penalty for each violation pursuant to O.M.C. Chapter 1.08.

B. Civil Remedies.

1. Any occupant at the time of application, or prospective tenant under Section 17.122.050.B, who believes that an owner has violated provisions of this Chapter may file an action against the owner for equitable relief (e.g., injunctions and restitution), actual damages or minimum damages, and recovery of costs and reasonable attorney's fees. The greater of actual damages or minimum damages of five hundred dollars (\$500.00) per violation shall be awarded for an owner's failure to comply with the obligations established under this Chapter. The greater of treble actual damages or minimum damages of one thousand dollars (\$1,000.00) per violation shall be awarded

for an owner's willful failure to comply with the obligations established under this Chapter.

2. The City Attorney may file an action against an owner that the City Attorney believes has violated provisions of this Chapter. Such an action may include requests for equitable relief (e.g., injunctions and restitution), assessment and recovery of administrative citations and civil penalties, and recovery of costs and reasonable attorney's fees. The City Attorney has sole discretion to determine whether to bring such an action.

- C. Nonexclusive Remedies and Penalties. The remedies provided in this Article are not exclusive, and nothing in this Article shall preclude a party from seeking any other remedies, penalties, or procedures provided by law.

### **17.122.090 – Additional Requirements.**

- A. Tenant Rights and Privileges. All tenants of Replacement Deed-Restricted Units shall have the same rights and privileges of other tenants in the same building or complex, as applicable and if provided generally in the development, 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 any parking spaces, access to doors and keys, and building rules and regulations.