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Demolition of Housing

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Contents

What is Demolition?	2
What Projects are Subject to these Requirements?	2
State Law 1:1 Replacement of Housing	2
No Housing Development Project	3
Replacement Housing Affordability Requirement	3
Determining Affordability	3
Right of First Refusal	4
Tenant Right to Occupy and Reoccupy	5
Relocation Assistance	5
Offer to Move	5
Permitting Requirements	5
Annual Compliance Monitoring & Replacement Housing Development Agreement	6
FAQ's	6

California State Law has become increasingly restrictive of the demolition of housing in an effort to ensure that existing density is not reduced and that housing that is currently rented to lower income tenants is maintained as affordable housing within new development. Additionally, relocation assistance is required by both the City Zoning Ordinance and state law as a payment and other assistance to the evicted tenant, and an offer to move is required by the City Zoning Ordinance to relocate a building slated for demolition prior to demolition, if possible. This document is intended to provide an overview of the potential requirements that may accompany a proposal for the demolition of one or more housing units. Note that state regulations for replacement housing are nuanced and layered and this document cannot provide guidance for every situation.

What is Demolition? Demolition, per the City Zoning Ordinance, is the destruction of more than 50 percent of the exterior walls of a structure. A wall must preserve existing framing, studs, openings, headers, top and bottom plates, and not utilize sistering or buttressing as a method of support to not be considered in the demolition calculation. Roofing and foundation replacement/repair are not included in this calculation.

What Projects are Subject to these Requirements?

- 1) Housing Development Projects that include the demolition of one or more residential units and the construction of two or more residential units. While state legislation defines a Housing Development Project as construction of one or more residential units (clarified in SB8 effective 1/1/22), the law was further clarified by *Reznitsky v. County of Marin* (June 2022)), and established the definition of a Housing Development Project as the construction of at least two residential units. The demolition and replacement of a single residential unit, such as a single-family residence, a townhouse, or an ADU, does not constitute a Housing Development Project.
- 2) Any other non-residential development project (“Development Project”) that includes the demolition of vacant or occupied protected units, or that is located on a site where protected units are proposed to be demolished or were demolished in the last five years.

The City does not interpret this section to include an addition to or remodel of existing dwelling units unless the units are not permitted and will be recognized with the permit.

Note that the requirements are slightly different for Housing Development Projects and Development Projects. See the attached table which lists the requirements for each.

State Law 1:1 Replacement of Housing. California State Law requires that any proposal for a Housing Development Project that includes the demolition of one or more existing housing units must include at least as many housing units as were demolished, regardless of tenancy or tenant income levels (Government Code section 66300.6(a)). State Law requires additional affordability restrictions on the replacement units if the units to be demolished, or previously demolished, were occupied by a low to moderate income household (Section 66300.6(b)). All types of housing units, including single-family dwellings, accessory dwelling units and junior accessory dwelling units are included in this requirement

and must be replaced, including unpermitted units if the unpermitted units are subject to affordability provisions. Existing provisions in the City Zoning Ordinance that allow for the payment of Replacement Housing In-Lieu fees (24.08.1370) or other alternatives to replacement housing are no longer consistent with state law and may not be used to meet this State Law requirement.

No Housing Development Project. For projects that are not Housing Development Projects (ie. Development Projects), State Law requires replacement of vacant or occupied protected units, and/or replacement of protected units on the site that were demolished in the last five years. In this case, the required replacement housing may be located on a site other than the project site but shall be located within the same jurisdiction. The applicant may contract with another entity to develop the required replacement housing. Any required replacement housing must be developed prior to or concurrently with the development project. Additionally, all of the requirements below also apply to a project that falls under this category.

Replacement Housing Affordability Requirement. For Housing Development Projects and Development Projects, California State Law requires that housing provided or constructed to replace “protected” units be deed-restricted for a 55-year term at rents affordable to very low or low income households or sold at an affordable ownership cost. Protected units are units that are: (i) subject to a form of rent or price control in the last five years, including but not limited to restrictions under an affordability agreement or covenant, or (ii) occupied by a lower income tenant in the last five years (Government Code Section 66300 and 65915(c)). State law also indicates that protected units are those that are removed from the rental market within the last 10 years pursuant to the Ellis Act; however, the City of Santa Cruz does not have an Ellis Act implementing ordinance and there are no local regulations that would restrict a property owner from getting out of the rental market, therefore, this criterion is not applicable in the City of Santa Cruz.

Additionally, if a project requests any of the benefits available under state density bonus law (Government Code section 65915), it must replace any “protected” units that were demolished in the past five years, even if the project itself doesn’t include the demolition of any dwelling units. (Government Code section 65915(c)(3)(A)).

Only the demolition of one single-family dwelling and construction of one single-family dwelling in its place is exempt from this replacement and affordability requirement. See FAQ’s below for information on how replacement units and inclusionary units are counted.

Determining Affordability. In order to determine if your project is subject to the affordability requirements described above, it must be determined if the housing to be demolished is “protected”. For non-Housing Development Projects, “protected” housing will be required to be replaced and deed-restricted. For Housing Development Projects, all housing regardless of protected status, must be replaced and protected housing must also be deed-restricted. It is likely that one of the following actions will apply to the project, depending on the status of the unit(s) and the proposed development:

- 1) If the units are occupied, the property owner must make a good faith effort to determine if any tenants are lower income. To determine incomes, the applicant may choose to ask the tenant to complete the City's Affordable Housing Determination Packet and submit it to the Housing Authority of the County of Santa Cruz (HA) for determination on income eligibility. This income information is essential to determine if replacement housing will be subject to affordability restrictions and if the tenant is eligible to receive the relocation benefits available to lower income tenants. Note that the HA charges a minimum fee for this process and may charge more depending on the completeness of the application and length of time to review. Replacement housing units must be rented or sold at the affordability level (either low income or very low income) for which the HA determines that the prior tenant was eligible. Alternatively, if the HA finds that the tenant is/was not considered a lower income household, then the replacement housing unit may be rented or sold at market rate.
- 2) If the units have been demolished or if the income category of the household in occupancy is not known and cannot be determined, it shall be presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy (CHAS) database (Government Code Section 65915(c)). All replacement calculations resulting in fractional units must be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the initial occupant of all affordable for-sale units must be persons and families of very low or low income, as required, and the units must be offered for sale at an affordable housing cost.
- 3) No affordability restrictions are required if the unit has been vacant for a five-year period preceding the application and if the unit was not removed from the housing market under the Ellis Act within the last ten years preceding the application, or if income verification is provided as described under Number 1 above and the most recent tenant is not considered a lower income household. Note that replacement housing will still be required in this situation, however, affordability restrictions will not be required to be placed on the replacement dwelling units unless the replacement units are identified as inclusionary units or density bonus affordable units. The property owner will be required to sign the Residential Demolition/Conversion Authorization Permit Form (Form #10) to confirm compliance.

Right of First Refusal. In addition to the above requirements for replacement housing and affordability restrictions, a property owner/applicant is required to provide existing lower income household tenants with the first right of refusal for a comparable unit in the new housing development that is affordable to

the household at an affordable rent. A 100% affordable housing development is exempt from this requirement if the tenant doesn't qualify for a residence in the new development and if a comparable unit cannot be provided due to unit size limitations or other requirements of one or more funding sources of the housing development.

If one or more single-family homes to be demolished qualify as protected units and are being replaced in a Housing Development Project that consists of two or more units, "comparable unit" means either of the following, as applicable:

- a. A unit containing the same number of bedrooms if the single-family home contains three or fewer bedrooms.
- b. A unit containing three bedrooms if the single-family home contains four or more bedrooms.

For multi-family, or attached homes, a "comparable unit" is not defined. Generally the unit must have the same number of bedrooms and the same square footage as the one currently occupied by the tenant.

Additional special rules regarding the right of first refusal apply if the existing units are being replaced by a 100 percent affordable housing development. (See Gov't Code § 66300(d)(2)(D)(ii)(II)).

Right of first refusal is not required for the construction of one single-family residential unit located on a site where a single protected unit is being demolished.

The property owner will be required to complete and sign the city's First Right of Refusal Proof of Compliance to confirm that this requirement will be met. The applicant shall submit proof of offer to tenants prior to eviction and shall submit correspondence with applicant indicating proof of acceptance and tenancy or a decline of the offer, prior to building permit final.

Tenant Right to Occupy and Reoccupy. Government Code Sections 66300(d)(2)(C)(i) and 66300(d)(2)(C)(ii) require that all tenants, regardless of income level, be permitted to remain in their dwelling unit until at least six months prior to demolition and have a right to reoccupy their units at their prior rent if the demolition does not take place and the units are returned to the rental market. The applicant must provide existing occupants with written notice of the planned demolition, the date they must vacate, and their rights under this section. Notice shall be provided at least six months in advance of the date that existing occupants must vacate and proof of notice shall be submitted to the planning department.

Relocation Assistance. For all Housing Development Projects and Development Projects, the property owner is required to pay relocation assistance to *existing* tenants who qualify as lower income households and who are displaced for the purposes of demolition and redevelopment. The City's Zoning Ordinance includes requirements for relocation assistance that pertain to projects that include the demolition of one or more housing units that are occupied by a lower income household. For projects that include a Housing Development Project of two or more units, state law requires relocation assistance that must be

implemented in addition to the City's local requirements. State law requires that the relocation assistance described in Government Code section 7260 et seq. be provided to all lower income tenants. This includes moving costs and assistance in obtaining new housing and may require payment of up to 42 months of the difference between rent affordable to the tenant and the rent required to obtain an adequate replacement unit. Applicants with lower income tenants must present a Relocation Plan to the City in the form required by state law and must retain a qualified relocation consultant to prepare the plan. **The Relocation Plan must be submitted with a Current Planning application for a Housing Development Project or Development Project and must be approved by the Planning and Community Development Department prior to approval.** The relocation plan shall be noticed at the time of the community meeting for the project, if one is required, and shall be posted to the project webpage on the city's website.

Payment of relocation assistance must be made by the property owner to eligible tenants prior to issuance of the demolition permit for the unit or issuance of a building permit or any other construction permit for the replacement project or use, or at the time of termination of tenancy, whichever occurs first.

Offer to Move. If a residential building is approved for demolition, the applicant is required to advertise an offer to move the building off-site if it is determined by the building official that the building is feasible for relocation off-site and capable of being moved without damage to significant trees and/or landscaping. The building must be offered at no cost or nominal cost and to be moved at the taker's expense, unless any discretionary permit requires otherwise. Requirements for advertising the building are provided in Section 24.08.1325(2) of the Zoning Ordinance and must be completed prior to building permit issuance for demolition of the structure.

Permitting Requirements. A proposal for demolition of housing will require approval of a Residential Demolition Authorization Permit (RDAP) pursuant to Part 14 of Chapter 24.08 of the Zoning Ordinance, in addition to any other required permits. An RDAP requires approval by the Zoning Administrator at a public hearing for all structures except for non-historic single-family dwellings, which may be acted on by staff in an administrative review. If a development proposes to utilize a permit streamlining provision of state law, such as the Affordable Housing Streamlining Act SB35 or the Supportive Housing Streamlining Approval Act SB2162, an RDAP will not be required, however, compliance with the objective standards described above (replacement housing, relocation assistance, offer to move, etc.) will be required as part of the project.

Annual Compliance Monitoring & Replacement Housing Development Agreement. The Housing Division of Economic Development will conduct annual compliance monitoring, at minimum, to ensure that the replacement housing restrictions are being met. These terms will be outlined in a Replacement Housing Development Agreement to be executed by the developer and City through the Economic Development Department. This agreement will be required to be executed prior to building permit issuance.

FAQ's

What are the household income limits that would make a tenant eligible for affordable housing?

Income limits are developed by the Department of Housing and Community Development and can be found online at: <https://www.hcd.ca.gov/grants-and-funding/income-limits/state-and-federal-income-rent-and-loan-value-limits>

What are the rent restrictions for affordable housing?

Rents must be as defined in Section 50053 of the California Health & Safety Code. The City is in the process of preparing a webpage with current rental rates that will be published on the City of Santa Cruz website. In the meantime, please contact the City's Housing Department staff for more information: housing@cityofsantacruz.com

I am demolishing multiple units and constructing multiple units. How can I be sure that I am meeting all the relocation assistance requirements?

Relocation assistance is a state and local requirement. Applicants with lower income tenants must present a Relocation Plan to the City in the form required by state law and must retain a qualified relocation consultant to prepare the plan. The Relocation Plan must be submitted with a Current Planning or Building Permit application and must include a timeline for implementation. The Relocation Plan will be reviewed by the City Attorney's office for consistency.

My tenants won't complete the City's Affordable Housing Determination Packet. How do I determine if they are lower income households?

It is the applicant's responsibility to obtain the required information from their tenants by informing tenants of their rights and requesting the information in the Affordable Housing Determination Packet. If the information can't be obtained then the tenants will be assumed to be lower income households at ratios prescribed in the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy (CHAS) database (Government Code Section 65915(c)).

Why am I required to provide both relocation assistance payments and provide the tenant with the first right of refusal?

State law requires that the project applicant provide both benefits to lower income tenants. Relocation assistance payments are intended to reimburse the tenant for the costs incurred during construction, while the right of first refusal is intended to prevent displacement of tenants from desirable neighborhoods. If the proposed development will not affect the rented unit and the tenant will not be evicted during construction, then the property owner will not be required to pay relocation assistance. In some cases temporary relocation may be provided if the tenant will be relocated for a short period.

I am required to provide inclusionary housing as part of my proposed housing development. Will affordable replacement units also count as my inclusionary units?

Any replaced protected units will be counted towards local inclusionary requirements if they meet the requirements of the City's inclusionary ordinance, and vice versa. Section 24.08.1360(b) of the zoning

ordinance states “Inclusionary rental units located on the same site may also be counted as replacement units, utilizing the more restrictive income and rent requirements for these units.” The use of the term “may” in this section has been previously interpreted as allowing for discretion in the matter, however, state law has now superseded this section, clearly allowing for affordable units to be counted as both replacement units and inclusionary units if the most restrictive requirements are met (Government Code Sections 66300(d)(2)(A)(ii) and 65915(c)(3)(A)(i)).

Please note that inclusionary units per City Ordinance are required to be maintained as affordable in perpetuity while rental replacement units under Housing Crisis Act §66300 and Density Bonus Law §65915 are only required to be maintained as affordable for 55 years and for-sale units may be subject to an equity share. If a project is approved with the replacement units counted as inclusionary units, then the more restrictive requirement (in perpetuity) will apply.

My project includes a request for a density bonus. Will affordable replacement units count as affordable units for the purpose of density bonus eligibility?

Yes, see above. The restricted affordable replacement units must also be considered as density bonus affordable units if they meet the requirements of density bonus law. Section 24.16.222(2)(b) of the Zoning Ordinance and Government Code § 65915(c) indicate that a housing development is eligible for a density bonus if it provides the affordable units required by density bonus law or the replacement affordable units specified in California Government code, whichever is greater.

There is a unit on my property that was removed from the rental market under the Ellis Act within the last ten years and it has not been rented since. Do I need to replace this unit if I demolish it as part of a Housing Development Project?

Yes, state law requires the 1:1 replacement of housing units whenever demolition occurs in conjunction with a Housing Development Project. However, past removal of the units from the rental market under the Ellis Act will not trigger affordability restrictions on the replacement unit in that the City of Santa Cruz does not have an Ellis Act implementing ordinance and there are no local requirements that would prohibit a property owner from getting out of the rental business. Other factors may trigger affordability restrictions for the replacement units, as described in the section above titled “Replacement Housing Affordability Requirement”.

Can I replace a full dwelling unit with a JADU as part of a Housing Development Project?

A full dwelling unit cannot be replaced by a JADU, however a demolished JADU can be replaced by a JADU.

I would like to demolish one dwelling unit or a duplex but I am not proposing a replacement project and the property would be vacant. Am I required to provide replacement housing?

In this scenario, approval of a Residential Demolition Authorization Permit would be required and one of the required permit findings is that a project has been approved that will replace the demolished or converted units. This means that a property cannot be made vacant by demolition. If the replacement project includes two or more units, State replacement housing requirements would be required. If the

replacement project includes one unit, the project is not considered a Housing Development Project and replacement housing per State Law would not be required. Note that State regulations for Relocation Assistance would be required if the existing tenants qualify as low income households and local city requirements for advertising/offering to move the units to be demolished off-site will also be implemented.

I just purchased a property with a single family dwelling. I would like to demolish the SFD and construct a new dwelling to live in as my primary residence. Currently, there are no tenants living in the house and I am not able to know if it was rented in the last five years. Am I exempt from replacement housing requirements?

The project is not considered a Housing Development Project which automatically requires 1:1 replacement of demolished residential units, however, relocation assistance may be required. The property owner must make a good faith effort to determine if the unit was rented in the last five years to a low income tenant. The city will confirm if the unit was enrolled in the Residential Rental Program and/or subject to an affordable housing agreement through the city housing department. The property owner will be required to complete and sign Form 10 to record the property owners final determinations.

I would like to demolish three or more dwelling units and construct a single family home. Am I required to reconstruct housing?

The project includes demolition but does not include a Housing Development Project or Development Project, therefore the project must meet the requirements in the city zoning ordinance. Approval of a Residential Demolition Authorization Permit would be required. Replacement housing is required for any units that are occupied by low or moderate income households. Section 24.08.1360 provides the replacement unit requirements which include that 50% of all low or moderate income bedrooms demolished or converted be replaced on site, elsewhere in the city, or a combination of both. In RT and C zone districts, the requirement is for 100% bedroom replacement. Relocation Assistance and requirements for advertising/offering to move the units to be demolished off-site will also be implemented.