

# **Supplemental Communications (2)**

(Communications  
distributed at the  
meeting)

12/6/2023

Dear Anne,

Here are my comments on the revised Demo Ordinance.

Late Communications  
Planning Commission

DEC 06 2023

RECEIVED  
at Meeting

## 1. Terminology

*23.326.030 Demolition*

*D. Conditions of Approval. Any Residential Unit(s) that will be demolished shall be replaced with equivalent units.....*

Replace “equivalent units” with “comparable units,” since there is a clear definition for the term.

## 2. Consider possible unintended consequence

*23.326.030 Demolition*

*D. 1. In the event that a displaced household has an income below 50% AMI, a comparable replacement unit shall be offered....*

This provision might create a disincentive to rent market rate units to low income people. Essentially, what it says is that the status of the unit changes based on who rents it, (which is also unlikely to be legally enforceable.)

It is certainly desirable to make sure that people can stay in Berkeley. It might help to raise the AMI limit to 60%, or some percentage that landlords cannot conveniently avoid when choosing tenants.

## 3. Nail down the date

*E. Requirements for Occupied Units*

*3. General Requirements. Tenants shall have until the date that the new units are ready for occupancy to decide whether to move into the newly constructed building.*

Who’s to say what’s “ready,” or when it occurred? Attach this provision to the Certificate of Occupancy, since that is a verifiable date. That day arrives when the Building Official issues the CO, and that’s hard to predict, therefore you need to specify a window and require written notification.

Suggested language:

*Within 5 days of the Certificate of Occupancy, tenants shall be notified in writing that the units will be ready for move-in on a date specified. Tenants shall have 15 days to respond to the written notice.*

## 4. Reality Check

*23.326.040 Eliminating Dwelling Units through Combination with Other Units*

*D. Two-Year Occupancy Requirement Following Elimination*

- 1. If a Residential Unit that is eliminated is not occupied by the applicant’s household for at least two consecutive years from the date of elimination...*
- 2. ...*

3. the affected Residential Units must either be restored as separate Residential Units...and offered for rent within six(6) months, or the owner must pay a fee of \$75,000....

This is not a realistic remedy.

If the unit has truly been eliminated and incorporated into another unit, restoration on this timeline is not possible. An applicant couldn't design a remodel and get a building permit in 6 months, nor would they. Modern requirements for unit separation have changed, and a "reversal" might be very challenging. It could be massively expensive if a kitchen and bathroom, or a separate entrance needs to be created. And the \$75,000 penalty could easily be out of reach for many.

Who would enforce this anyway?

We will occasionally lose a unit to a recombination. We just have to accept that.

Some of you might have read about some very negative consequences of this in NYC. Just know that Berkeley doesn't have NYC's 150 year history of carving up residences into units, and there's no reason to expect a measurable loss of housing supply in Berkeley.

#### **5. Name a few other possible necessities...**

23.326.040 Eliminating Dwelling Units through Combination with Other Units  
F. Exception. The ZAB may approve a Use Permit to eliminate a Residential Unit through combination...for the purpose of providing private bathroom, kitchenettes, accessibility upgrades, and/or seismic safety upgrades to single-resident occupancy rooms...in developments undergoing a publicly-funded rehabilitation.

There are a few other uses you might want to add to the list, since they can be requirements of public financing: the creation of community space, office space for supportive services, or on-site management office or unit.

Alternatively, you could say, "or other elements required by funding sources or programmatic needs."

#### **6. Avoid tripping a Costa Hawkins wire.**

*23.326.080 Building Relocation.*  
*2. Relocation a building to a lot within the city is ~~considered new construction~~ and is subject to all requirements applicable to new construction.*

Simply delete "considered new construction." We don't lose anything with that edit, and we avoid a legal hassle.

Best,

Elisa Mikiten

AB1218

This bill proposes to amend the HCA's demolition protections in several ways, including:

- 1) Moving the demolition protections into its own article under the HCA chapter of Planning and Land Use law. This change will improve visibility and legibility of the law, which is currently located within a subdivision of the larger HCA.
- 2) Applying the demolition protections for sites with protected units that are proposed to be developed for non-residential purposes (e.g., offices, retail). The non-residential development projects would be responsible to relocate displaced tenants and to replace demolished protected units. This will prevent the loss of units affordable to lower income households in the instance when a proposed development is not a housing development project. The bill includes an exception to this provision for industrial projects in non-residential zones.
- 3) Applying the demolition protections to sites where protected housing units were demolished in the previous five years, as long as that demolition occurred after January 1, 2020. This five-year lookback provision is the same as the demolition protections contained in both housing element law and density bonus law.
- 4) Specifying that the notice to the occupants of the proposed demolition project proponent must be written and include the date they must vacate, and their rights under this section of law. This replaces the current noticing requirements that are challenging to implement, as they are contained in a Title of the Government Code that contains 38 different sections of law.
- 5) Requiring that the project proponent must provide written notice at least six months in advance of the date that existing occupants must vacate. This provision will help existing occupants of units to be demolished identify new accommodations.

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From Bryce Nesbitt, Acton St. Berkeley

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Perhaps the simplest fix is to define, for purposes of the Demolition ordinance, that a single family home remains a single family home, even if an ADU and/or JADU has been added.

This sidesteps all sorts of complexity.

ADU and JADU's use space on an otherwise single family lot to provide housing: often low cost funky Berkeley like housing. But owner needs change over time. I might establish a JADU but later host a kid back from college or a caregiver or start a business and want a shop or... whatever. Given the modest numbers involved, there's no need to make ADU and JADU conversions a one way street.

BMC 23.326