

Supplemental Communications

(Received after the
12pm January 16
submittal deadline)

Late Communication

From: Bryce Nesbitt <bryce2@obviously.com>
Sent: Tuesday, January 16, 2024 7:40 PM
To:
Cc: Elisa Mikiten; Horner, Justin
Subject: Clean Copy of Correspondence Planning Commission Demolition Ordinance

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

For forwarding to the commission:

December 21, 2023

Dear Planning Commission;

There are many small owner or owner occupied properties in Berkeley that have “extra space” that could be used for housing. Empty nesters, new families with small children that don’t need their own bedroom yet, hillside slope lots with undeveloped space, garages no longer needed for vehicles and more. It’s a reasonable City policy to promote use of that space for housing. The City has turned a blind eye to this kind of use for decades, and recently has been generally receptive to the State ADU mandate.

However, if the new demolition ordinance says that creating a dwelling unit is a *permanent* commitment, this will, has, and should cause any decision maker pause.

What if changing family requires more bedrooms, what if the family wishes to open a business, operate a shop, store goods, house a caretaker or even just enjoy a spare room? What if future circumstances for the owner are incompatible with operating a rental housing business (age, inclination, family issues). It’s real work to own and operate rental housing: it may be right for many people for many years, but not as a lifetime commitment.

You might be tempted to start listing exceptions to the removal of units, but you’d quickly go crazy trying to draw a bright line separating worthy from unworthy removals. The very complexity of the effort to create “good” and “bad” demolition reasons will create a code so complex it can’t be understood by the average person who may have space to build a new unit.

In the end very few units of this type will ever be removed. It’s not worth the effort (staff time, litigation, reputation and housing production risks) for the tiny number of units preserved. We’re better off focusing on mass production of units.

Proposed inclusions:

- 1.
- 2.
3. *Tenant occupied properties of any sort.*
- 4.

Proposed exemptions:

- 1.
- 2.
3. *Owner occupied properties of three or fewer dwelling units, regardless of the mix of*

4. *dwelling types.*
- 5.
- 6.
- 7.
8. *Properties of three or fewer dwelling units, where the owner occupancy exemption was*
9. *lost due to a death or medical relocation within the last three years and the property has not yet been sold.*
- 10.
- 11.
- 12.
13. *Properties of three or fewer dwelling units owned by individuals or family trusts, as*
14. *long as they are “small” owners.*
- 15.
- 16.
- 17.
18. *Unpermitted units*
- 19.

This exempts the most complex and problematic cases: keeping mass housing production incentives in place.

Equity Angle

When owners can sign term leases and flexibly allocate space, they're going to be more willing to. Right now high income owners can leave space empty or underutilized.

Why do I care?

I work in permitting illegally constructed units, and in resolving difficult rental situations. It's to the benefit for the City and renters to have comprehensible laws, and to have units brought under regulation. The proposed changes to the demolition ordinance move us in the wrong direction, and if enacted will keep more units in the shadows or empty. Having crazy complex laws benefits me as a consultant. But not the community as a whole.

What an ideal ordinance would look like

- 1.
- 2.
3. Citizens with average education should be able to understand the intent and major responsibilities
4. by reading the law. This goes for developers, homeowners, renters, advocates and all other parties. The current draft ordinance is an
5. **Araucaria Araucana.**
- 6.
- 7.
- 8.
9. The law should be easily summarized.
- 10.
- 11.
- 12.
13. If a rule bans a rare case, it may be more appropriate to let that go, if the broader
14. goals of the ordinance are retained or enhanced.
- 15.

A Note on Combinations & Goldens

I've been contacted by a number of owners who have a backyard ADU and space for a Junior ADU. So far zero of those have continued producing that housing, after the City laws were explained.

Bryce Nesbitt
Unpermitted Unit Consultant
Transportation Commission Member (for identification)
Born and raised in Berkeley, CA

PS Here's a summary from a pro-housing group of SB330 you might find useful. It's a complex law, and this summary gets to the point:

Housing Crisis Act of 2019 (aka SB-330, or HCA, codified in Government Code Section 66300(d)). Step by Step Guide to Unit Replacement

Once you've identified a development project on a site with existing residential units you need to establish what types of units are on the site.

1. The following are eligible for **replacement**
 1. Units occupied currently or in the last 5 years by a low (80% AMI) or very low (50% AMI) income household (Area Median Incomes can be found [here](#)).
 2. Units subject to **any sort of price or rent control** in the last five years.
 3. Units subject to any sort of rent restriction through a covenant or deed restriction (subsidized affordable housing) in the last five years.
 4. Units withdrawn from the rental market under the Ellis Act (Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1) within the last ten years
2. To determine if a project site has **protected** units you should endeavor to find the following and/or ensure that your local permitting body is aware of the following
 1. The rent rolls for the preceding 5 years.
 2. Any Ellis Act evictions that may have occurred on the site in the preceding 10 years.
 3. Any information necessary to determine whether an existing building is covered by local rent control/stabilization.
 4. Any subsidized affordable units on the site in the preceding 5 years.
3. The following **restrictions** apply to **replacement** units
 1. **All replacement units for "protected units" must be rented at rents that are considered affordable. If the previous tenant returns to the unit, their rent can be no more than 30% of their household income.** If the previous tenant does not return, the rent must be affordable to households with low incomes, as defined by HUD.
 2. Replacement units must be designated for affordable rents for a **period of 55 years.**
 3. Existing low-income tenants of *protected* units must be given first right of refusal on replaced units. Tenants who are not low income are not required to be given a first right of refusal for replacement units.

Late Communication

From: Covello, Zoe
Sent: Wednesday, January 17, 2024 9:52 AM
To: Planning Commission
Cc: Anne Hersch (AHersch@berkeleyca.gov); Alisa Shen (AShen@cityofberkeley.info)
Subject: Status of District 7 Commissioners
Attachments: Memo to Secretaries re Council Vacancy - D7 Robinson resignation.pdf

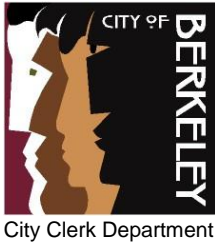
Dear Commissioners,

Please see the attached memo regarding District 7's Council Vacancy.

Thank you,

Zoe Covello
Associate Planner | Land Use Policy
City of Berkeley | Land Use Planning Division
zcovello@cityofberkeley.info

In-office: Mon, Tues, Wed
WFH: Thur, Fri



January 12, 2024

To: Commission Secretaries
From: Mark Numainville, City Clerk
Subject: Councilmember Robinson Commission Appointees

Councilmember Robinson, representing District 7, has resigned from the Berkeley City Council, effective 5:00 p.m. on January 12, 2024. This memo addresses certain matters concerning the roles and responsibilities of the commissioners serving under his appointment. Please share this information with your commission.

1. Leaves of Absence

Municipal Code Section 3.02.030 states that "a member of a board, commission or committee may be granted a leave of absence not to exceed three months by the appointing Councilmember or the Council..." It goes on to say that "the appointing Councilmember or the Council may fill such a vacancy by a temporary appointment..."

Since the Council as a whole may only grant leaves of absence to commissioners that the council appoints as a whole, there is no provision for the appointees of a vacant council seat to obtain a leave of absence. Please advise your District 7 appointees that any absence from commission meetings will be considered an unexcused absence and will be reported on the next semi-annual attendance report.

2. Appointments/Re-appointments

No new appointments/re-appointments may be made for District 7 vacancies until a new Councilmember has been elected to this office.

3. Temporary Appointments

No temporary appointment may be made for a District 7 commission seat until a new Councilmember has been elected to this office.

4. Terms of Office

Berkeley Municipal Code Section 2.04.075 provides that a commissioner's *term* expires upon the resignation of the councilmember who appointed them. In this context, "term" refers to the initial term of the commissioner which normally expires on December 1 of the first year of their appointment. The commissioner's *service* on the commission is extended beyond the resignation of the Councilmember and they may continue to serve as a "hold over" commissioner until a new appointment is made. Of course, these commissioners are still subject to all the requirements for commission membership and service (e.g. Form 700, attendance, etc.).

cc: Mayor & City Council
City Manager
City Attorney

1/17/2024

Andrew Fisher
info@andrewfisherconsulting.com

The unholy quadrangle of unpermitted units:

1. For many unpermitted units, it is cost prohibitive to get permits, and for some it is simply not possible or desirable.¹
2. Unpermitted units shouldn't be rented out (they are unpermitted after all).² But if they are not rented out going forward and were ever registered with the RSB, they will be subject to the Empty Homes Tax that is now in effect (the base rate per unit for the second year and beyond is \$6k-\$12k per year, adjusted annually).³
3. HCE is doing random inspections of rental units and citing unpermitted units, requiring owners to permit them (see 1 above) or eliminate them (see 4 below).
4. Under the current draft of the demolition ordinance, in many cases, owners won't be able to eliminate unpermitted units.⁴

Solution: Allow unoccupied, unpermitted units to be eliminated by-right.⁵

Punishment: Having proposed this solution before, I was told some people involved in drafting the amendments "don't want to reward landlords who have rented out unpermitted units by letting them just remove them." I disagree, the motivation for the code shouldn't be punishment, but safe housing and reasonable practices. And for those who do think there should be punishment, consider that it is likely most unpermitted units were established by *previous* owners at a time when adding unpermitted units was commonplace and accepted. Moreover, many buyers of properties with unpermitted units don't know a unit is unpermitted. I don't know how many times I have heard of "golden duplexes" sold as such that are actually a SFH with an unpermitted in-law unit. Is punishment then the right approach?

Tenant Rights: The other concern I have heard mentioned has been maintaining tenant rights. But tenant rights already to protect tenants when they occupy unpermitted units. Again, I am only proposing that *unoccupied* unpermitted units be allowed to be eliminated by right.

It is so easy to get tangled in this web: For an unpermitted unit to be established according to the rent board, all that needs to happen is that a room gets rented and the tenant(s) function as their own household. (Tenants don't even need access to a kitchen or a means to prepare food to be considered a rental unit.)

Rooming houses: What about rooming houses where 5+ bedrooms are individually rented and individually registered with the RSB, are they each Residential Units? What if some are unpermitted bedrooms (say a former living room or garage)? What if some have a hot plate or a bathroom or both?

Summary: Protecting unoccupied, unpermitted units with the full force of the Demolition Ordinance not only seems unnecessary but it risks creating innumerable situations that are very costly and very difficult to resolve.

¹ Getting permits for an additional unit can involve large scale changes to buildings, costing hundreds of thousands of dollars in many cases.

² They pose a variety of known and unknown safety and liability risks to tenants, neighbors, and housing providers.

³ This will be true on properties where the owner lives elsewhere, owner owns more than one residential property, and, where owner has only one residential property and lives onsite, for properties with more than four units.

⁴ e.g. Properties where owner occupancy standard isn't met (owner lives elsewhere, they just purchased it and the previous owner didn't live there, or owner lives there now but need to live elsewhere in the near future).

⁵ With building permits, to assure it is done properly. And if not by-right, at least by Zoning Certificate.

Late Communication

From: La Fan <elefantone@gmail.com>
Sent: Wednesday, January 17, 2024 9:32 AM
To: Planning Commission
Subject: single family homes

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear City Council

I ask you to protect affordable housing and to mandate the requirement of use permit for demolishing single family homes in Berkeley.

As you know AB 1482 is a state law that imposes some rent control on housing that is at least 12 years old, including many single family homes.

As a result, demolishing single family homes often means demolishing rent controlled housing (and replacing it with market rate housing).

This would essentially weaken AB1482 throughout the city.

thank you

Laura Fantone
Berkeley resident since 2008

Late Communication

From: Matthew Lewis <mrlewis125@gmail.com>
Sent: Wednesday, January 17, 2024 9:00 AM
To: Planning Commission
Subject: Requiring a Use Permit for SFH Demolitions Protects Tenants

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Planning Commissioners,

I am deeply concerned from an affordability and equity perspective that the Planning Commission is considering allowing the demolition of single-family homes with merely a zoning certificate. It seems to me that the commission is under the mistaken belief that just because Costa-Hawkins exempts single family homes (as defined under state law) from rent control, that there is no downside to demolishing them.

Why is this a problem? Are single family homes inherently more affordable or otherwise better than multi-unit properties? No, they're not. Due to Costa Hawkins, they're usually (but not always) exempt from rent control and therefore less affordable. However, **letting landlords demolish these units "by-right" means demolishing rent-controlled and rent control-eligible housing, as well as other affordable housing.**

1. **Older housing is generally more affordable than newer housing.** So older single family homes are usually more affordable than the housing that would replace them.
2. **Some single family homes are rent controlled!** When an ADU (or another residential dwelling) is built on the same property as a single family home, the property is no longer considered a "single family home" under Costa-Hawkins because there is more than one dwelling unit present. That means state law no longer exempts them from rent control!
3. **Single family homes that are not currently rent controlled can become rent controlled.** New ADU's and other buildings can be built on the same lots as existing single family homes, and existing single family homes can be converted into duplexes and triplexes, bringing the original units under rent control.
4. **Older single family homes are subject to AB 1482's rent caps.** AB 1482 is a state law that imposes (weak) rent control on housing that is at least 12 years old, including many single family homes. As a result, demolishing single family homes often means demolishing rent controlled housing (and replacing it with market rate housing).
5. **Many single family homes that are not currently subject to AB 1482's rent caps will become subject to them in the future.** For example, when a hedge fund company buys up a single family home, it will become subject to AB 1482. Just like we need to protect rent control-eligible housing, we need to protect AB 1482-eligible housing to protect working class tenants.

Requiring a use permit instead of a mere zoning certificate is crucial because it allows tenants and the community to intervene to prevent wrongful issuances, such as when tenants were harassed or no-fault evicted.

I know from personal experience how important this is. As a student at UC Berkeley, I filed a successful appeal on behalf of the ASUC over demolition permits for [2631 Durant Avenue](#). The landlord had tried to claim that he was exempt from paying the demolition fee because the units were supposedly uninhabitable. But that was only because he had intentionally allowed the buildings to become decrepit - including allowing the Fire Department to destroy the walls

as part of a training exercise (which I by chance also personally witnessed and vividly remember due to how bizarre it looked). If we had not been able to appeal this wrongful issuance, then the former tenants and the community would have been further wronged.

Sincerely,
Matthew Lewis

P.S. Since you will not be able to see the destination of the above hyperlink if this email is printed out, the url is <https://www.sfchronicle.com/bayarea/article/Berkeley-s-approval-of-demolition-increases-8349942.php>.



Virus-free. www.avg.com

Late Communication

From: Judy MacLean <judymac@igc.org>
Sent: Wednesday, January 17, 2024 10:38 AM
To: Planning Commission
Subject: Demolition Ordinance - require a use permit for demolishing single family homes

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Commissioners:

I urge you to **require a use permit for single family homes in the changes you are considering to the Demolition Ordinance**, just like for multi-unit buildings.

As a tenant, I care about maximizing the amount of rent-controlled and affordable housing. If you allow single family homes to be demolished with just a zoning certificate, it can reduce rent-controlled and affordable housing.

Some Berkeley single-family homes are rent-controlled, and single-family homes can become rent controlled if an accessory dwelling unit is added. Allowing developers to demolish rent-controlled homes to build market-rate housing will cause affordable housing to be replaced with with more expensive housing. Developers and investors will profit, tenants will be further squeezed out.

Sincerely,

Judy MacLean

2610 Regent St apt 201

Berkeley, CA 94704

Late Communication

From: Igor Tregub <itregub@gmail.com>
Sent: Wednesday, January 17, 2024 1:52 PM
To: Planning Commission
Subject: Comments on by-right demolition proposal

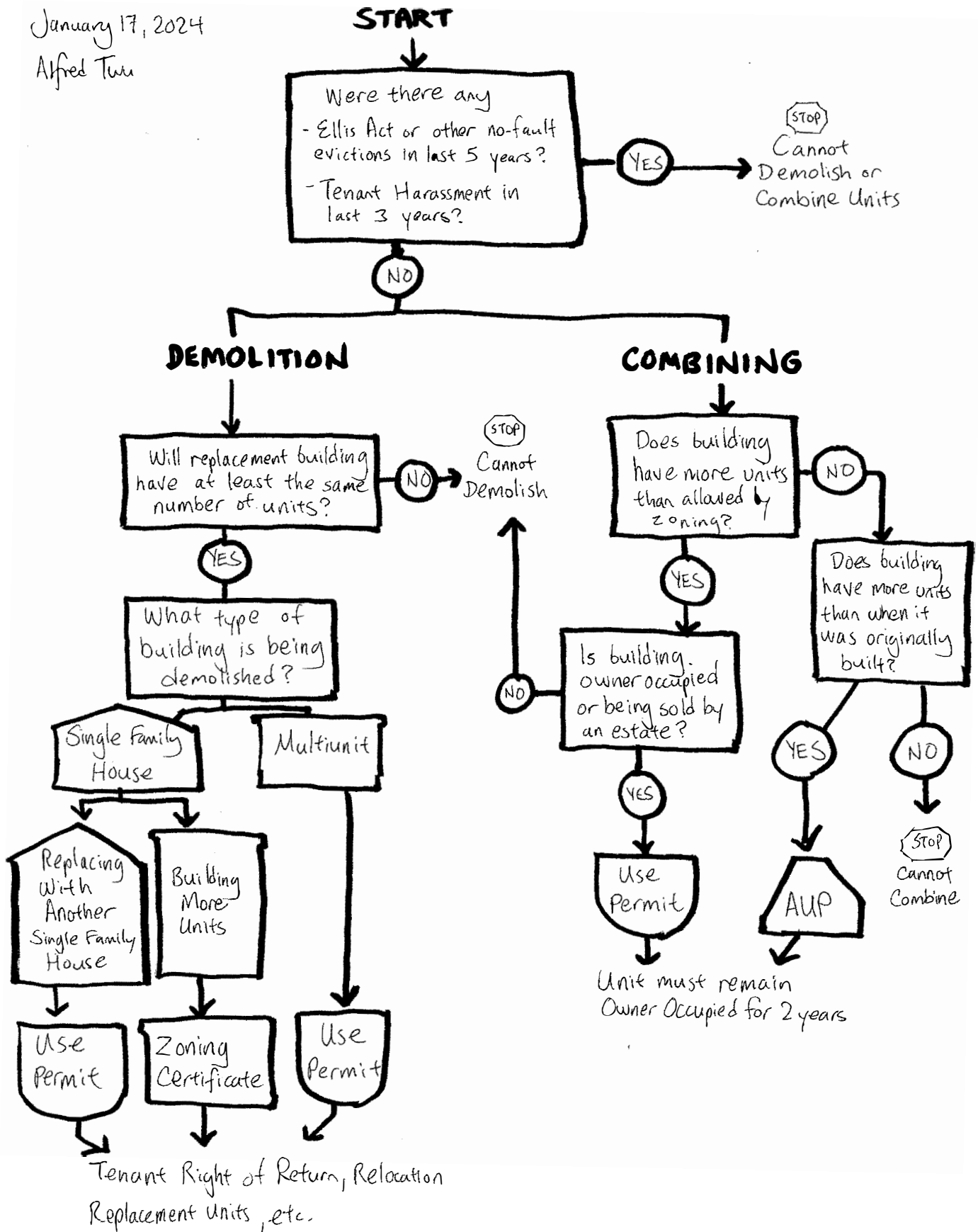
WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Chair and Members of the Planning Commission,

I have been alerted to a proposal before you tonight to remove discretion in the demolition of single-family homes. Having not had an opportunity to review the proposal, please consider these as my preliminary thoughts for your consideration. I write in my individual capacity, but have served on the Zoning Adjustments Board since 2012. In that time, I'm only aware of one, maybe at most two, residential demolition permits that were not approved, and I believe that both of them had sitting tenants. I enthusiastically support the production of new housing, particularly multi-family housing, which many of the demolition permits before us have initiated. However, it would be important for me to make certain, as I imagine it is for you, that making it easier to develop multi-family housing does not provide a perverse incentive for property owners who rent out their SFHs to end these tenancies prior to the tenants' intent to vacate the property. Older housing stock provides important and needed naturally occurring housing options. The ZAB, in its evaluation of a demolition permit, is one of the few backstops available under state law to ensure that when such a demolition moves forward, the sitting tenant can be made somewhat whole - particularly since these single-family homes, when used as a rentals, generally don't require replacement for at least one permanently affordable rental unit. I understand that many demolitions of SFHs that come before us have never been used as rentals, and this concern is triggered by a relatively small fraction that does. But we've seen those situations as well and the havoc that it creates in tenants' lives when they are displaced without the opportunity to be made whole. Please ensure that their ability to be made whole can still occur. Thank you for your consideration.

Respectfully,
Igor Tregub

January 17, 2024
 Alfred Tui



Shared by Commissioner Mikiten
at the 1/17 meeting

Amendments for Proposed Demolition Ordinance

BACKGROUND: State law SB 330/SB 8 says that replacement is required when a residential dwelling unit being demolished (1) is or was occupied by a low- or very low-income household within the past five years, (2) if the unit is rent-controlled, or (3) was subject to the Ellis Act¹ within the last 10 years.

Four items in the proposed demolition ordinance exceed the requirements of SB 330/SB 8. As unintended consequences, they would increase the cost of housing and/or discourage construction of new units. For each item I have referenced its place in the proposed demolition ordinance and in SB330/SB8, chaptered as state Government Code (GC) Section 66300.5 and .6.

1. Modify definition of “Residential Unit” to align with state law SB330/SB8 definition of protected units that are subject to replacement and other benefits. [See 66300.5.h.3; 66300.6.b.4] It’s overly broad and inappropriate for the proposed demolition ordinance to apply to “any dwelling unit.” In effect, a homeowner who rented their single-family home to a high-earning household would be subject to this ordinance in the event that the homeowner chose to demolish their home. Try to verify this understanding with staff during the meeting.

Recommended fix: Replace the current text and replace with the following.

[.010.A.1] “Residential Unit” means, for purposes of this chapter, a dwelling unit that was occupied by a low- or very low-income household within the past five years, or if the unit is rent-controlled in the past 5 years, or was subject to the Ellis Act within the last 10 years.

2. Modify the definition of “comparable unit” [.020.A.3] to match that in SB 330/SB 8: [66300.6.b.4.C.]

SB 330/SB 8 doesn’t provide a definition of “comparable units,” but uses the phrase to describe replacement units for single-family homes in projects of two or more units. It allows the replacement unit to have fewer bedrooms than the demolished unit and does not restrict the size or number of rooms [66300.6.b.4.C.]. The proposed Demolition Ordinance requires very large homes to remain very large, with the same number of bedrooms, private open space, common facilities, and location within the neighborhood and school district. If applied to a

¹ Ellis Act eviction refers to an owner evicting a tenant for the purposes of permanently removing the unit from the rental market.

2

small parcel, the requirements could make it impossible to build a middle housing project with smaller units. The definition of comparable is too onerous under the current housing shortage.

Recommended fix: Amend 020.A.3 to read as follows:

3. "Comparable Unit" means a Dwelling Unit ~~would not be materially detrimental to the housing needs and public interest of the affected of similar size (square footage and number of bedrooms); amenities (private open space and common facilities) and location within the city (neighborhood and Berkeley school attendance area);~~ with a similar number of rooms and indoor amenities.

3. The proposed demolition ordinance places replacement requirements for demolished Accessory Dwelling Units (ADUs)/Junior Accessory Dwelling Units (JADUs) which violate state law. It's also bad policy because it would make it harder to replace these units with middle housing.

For these projects that include only **two units** (ADUs/JADUs/Golden Duplexes), where one is a protected unit and the other is a residential unit, state law exempts the replacement units from income limits and comparable size requirements [GC Section 66300.5.a.1.i] and from the right of first refusal for the existing occupant(s) [66300.6.b.4.B.i]. Berkeley's proposed demolition ordinance does not include these exemptions, and thus violates state law.

On a policy basis, the proposed inclusion of ADUs/JADUs/Golden Duplexes in the demolition ordinance would discourage homeowners from pursuing middle housing. Specifically, the homeowner would lose control over choosing the new tenant, the unit's size, and the rent, and we know that homeowners want control and flexibility.

Recommended fix: Delete the current text and replace it with the following:

020.A.2 "Residential Unit" does not include any ADU or JADU in housing development projects with one residential unit and one protected unit. When ADUs and JADUs are part of a parcel that has more than one protected unit, they are subject to the requirements below. The Zoning Adjustments Board (ZAB) may approve ~~an extent that~~ [typo] tenant notice, protections for eviction and relocation benefits outlined in this ordinance.

3

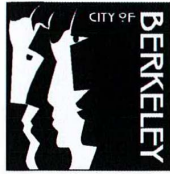
4. The proposed ordinance uses the Ellis Act rather than “no fault eviction” to identify units that may not be demolished. [030.A.1] and [040.C.1]

SB330/SB8 only applies to units removed from the rental market through the Ellis Act [66300.5.h.4]. The proposed ordinance goes beyond state law in that it prohibits demolition if a “no fault eviction” occurred in the previous five years [.030.A.1]. “No fault eviction” includes move-in for the owner and the immediate family. Prohibiting demolition because an owner’s mother moved in three years ago seems heavy handed, overly broad, unfair, and creates a barrier to providing middle housing by-right. Further, Council’s direction on January 18, 2023 in adopting the Housing Element, specified that demolition should not occur in the event of an Ellis Act eviction (not a no-fault eviction) within the past five years.

Recommended fix: Reinstate the standard found in the existing Demolition Ordinance, as follows:

030.A: Demolition is not allowed if

1. The ~~building~~ Residential Unit (or units) was removed from the rental market under the Ellis Act ~~—unthrough a no-fault eviction~~ during the preceding five years.r



Rent Stabilization Board

MEMORANDUM

DATE: January 17, 2024
TO: Honorable Members of the Planning Commissioner
FROM: Leah Simon-Weisberg, Chair of the Rent Stabilization Board
SUBJECT: Proposed Amendments to the Demolition Ordinance

State law allows Berkeley to require that any development which demolishes a deed-restricted affordable residential rental unit or a rental unit subject to the price control provisions of Berkeley's Rent Stabilization Ordinance to replace each of those units with a rental unit affordable to lower income households (California Government Code section 65915(c)(3)(B) and (c)(3)(C)). However, the Rent Board has become aware of recent demolition and development projects where the City has not exercised this authority and has instead required the project to replace affordable units based on a formula which models the income distribution of all renters in Berkeley.

This approach has led to the replacement of formally rent-controlled units with new, market rate units. From conversation with City staff, the Rent Board understands that the policy of the City is to require "one-for-one" replacement of affordable and rent-controlled housing.

To make this policy explicit, we suggest the insertion of language that requires the replacement of all rent-controlled units with below market rate units as allowed by state law. Because state law already requires the replacement of affordable rental units and rent-controlled units where the income level of the occupants is known with a rental unit at the same or a greater affordability level, this language addresses the circumstances where the income level of occupants in a unit to be demolished is unknown.

The proposed language cites the specific provision of state law that requires replacement of rent-controlled units in this manner. An alternative version recites the specific characteristics of replacement units as authorized by state law. Either version would appear as a new subdivision in Berkeley Municipal Code section 23.326.020.D (currently at pages 28 and 29 of the public agenda packet for this meeting).

Option 1: Replacement language containing references to state law:

Section 23.326.020: D. Conditions of Approval.

Any Residential Unit(s) that will be demolished shall be replaced with comparable units in accordance with Government Code section 66300.6 and shall comply with applicable affordability requirements in Chapter 23.328 [Affordable Housing Requirements] and Chapter 23.330 [Density Bonus] as they may be amended from time to time.

1. In the event that any residential unit that will be demolished was subject to rent or price control under Chapter 13.76 of this Code within the five-year period preceding the application and the income level of the household which occupied that residential unit on the date of application or most recently preceding the date of the application is unknown, it shall be presumed that the residential unit was occupied by persons or families above lower income and the unit shall be replaced in accordance with Government Code section 65915(c)(3)(C)(i).

~~2.~~ 2. In the event that a displaced household has an income below 50% AMI, a comparable replacement unit shall be offered at a rent that is affordable to households at 30% of AMI, and the displaced household shall have the first right of refusal for that unit. Such a unit shall be counted as a Very Low-Income unit for applicable affordability requirements in Chapter 23.328.

~~3.~~ 3. In the event of a demolition of a Residential Unit created without proper Use Permit(s) or Building Permit(s), as defined in 23.326.020(A)(3), the Building Official, Zoning Officer or Fire Marshal may determine that the replacement of such a unit is infeasible and not required under this Chapter. Such a determination shall include a finding that the replacement of the unit could not occur in compliance with Zoning Code, Building Code, Fire Code or other regulations related to public health and safety.

Option 2: Replacement language without reference to state law:

Section 23.326.020: D. Conditions of Approval.

Any Residential Unit(s) that will be demolished shall be replaced with comparable units and comply with applicable affordability requirements in Chapter 23.328 [Affordable Housing Requirements] and Chapter 23.330 [Density Bonus] as they may be amended from time to time.

1. In the event that any residential unit that will be demolished was subject to rent or price control under Chapter 13.76 of this Code within the five-year period preceding the application and the income level of the household which occupied that residential unit on the date of application or most recently preceding the date of the application is unknown, the unit shall be replaced

with a unit affordable to lower-income household and subject to a recorded affordability restriction for at least 55 years.

~~1.~~ 2. In the event that a displaced household has an income below 50% AMI, a comparable replacement unit shall be offered at a rent that is affordable to households at 30% of AMI, and the displaced household shall have the first right of refusal for that unit. Such a unit shall be counted as a Very Low-Income unit for applicable affordability requirements in Chapter 23.328.

~~2.~~ 3. In the event of a demolition of a Residential Unit created without proper Use Permit(s) or Building Permit(s), as defined in 23.326.020(A)(3), the Building Official, Zoning Officer or Fire Marshal may determine that the replacement of such a unit is infeasible and not required under this Chapter. Such a determination shall include a finding that the replacement of the unit could not occur in compliance with Zoning Code, Building Code, Fire Code or other regulations related to public health and safety.



Rent Stabilization Board

DATE: January 17, 2024
 TO: Members of the Planning Commission
 FROM: Lief Bursell, Senior Planner
 SUBJECT: One for One Replacement of Demolished Rent-Controlled Units with Below Market Rate (BMR) Units

One of the policy goals of City of Berkeley’s existing Demolition Ordinance (BMC 23C.08) is to encourage the creation of below-market rate replacement units for approved demolition projects in order to mitigate the impact of the loss of older, more affordable residential units which are typically subject to rent control.

Rent Board staff reviewed development applications involving demolition of existing residential units that were applied for between calendar years 2022 and 2023, and found that four applications (three already approved by the Zoning Adjustments Board) did not propose one to one replacement of the existing rent-controlled units with an equal number of BMR units. (A report on this topic, prepared for the Rent Board’s December 21, 2023 meeting is attached)

For three of these projects, this is due to the State Density Bonus Law (Gov. Code § 65915(c)(3)) method for calculating the affordability levels of replacement units when the income category of the current or last known occupant is not known. This calculation assumes that income levels of renter households are in the same proportion as other lower income renter households in Berkeley, as determined from the most recently available data from HUD’s Comprehensive Housing Affordability Strategy (CHAS) database.

HUD’s Comprehensive Housing Affordability Strategy (CHAS) database for Berkeley, CA		
CHAS Income Levels	Berkeley CHAS Renters, by income	% distribution
<30% AMI (Extremely Low Income)	8,550	32.6%
30-50% AMI (Very Low Income)	3,820	14.6%
50-80% AMI (Low Income)	3,675	14.0%
80-100% AMI (Moderate Income)	1,930	7.4%
<100% AMI (Above Moderate Income or Market Rate)	8,225	31.4%

Using the Berkeley CHAS calculations result in existing residential units being replaced by BMR units at a variety of income levels, from extremely low to market rate level. When the calculations result in an income level greater than 80% AMI, only market rate replacement units are required. This creates project outcomes where demolished rent-controlled units can be

**One for One Replacement of Demolished Rent-Controlled Units with Below Market Rate (BMR) Units
 January 17, 2024** **Page 2**

replaced by market rate units, when the current or most recent tenant income level is unknown (as is often the case).

Berkeley’s CHAS numbers include newer buildings that are not as affordable to lower income tenants, which is why they are not a good measure for the income levels of tenant households in the rent-controlled housing stock. The Berkeley Rent Board’s 2022 Tenant Survey of Rent-Stabilized Units provided information on the income levels of tenants in rent-controlled housing. Income distributions of rent-controlled households were far higher than the CHAS Berkeley data, particularly in the categories of Very Low Income through Moderate Income, and a far lower rate of above market rate incomes.

CHAS Income Levels	Berkeley CHAS Distribution %	Short-Term Rent-Controlled Tenancy	Long-Term Rent-Controlled Tenancy
30-50% AMI (Very Low Income)	14.6%	29.0%	45.0%
50-80% AMI (Low Income)	14.0%	17.0%	22.0%
80-100% AMI (Moderate Income)	7.4%	23.0%	26.0%
<100% AMI (Above Moderate Income or Market Rate)	31.4%	15.0%	23.0%

The income distributions for rent-controlled units from the 2022 Tenant Survey clearly show that the CHAS income distribution data for Berkeley does not accurately reflect the incomes of tenants in rent-controlled units.

The Planning Commission should consider the ways that Demolition Ordinance can reach the policy goal of one to one replacement of rent-controlled units with BMR units and to avoid reliance on the income distributions from the HUD CHAS database and take advantage of the SB 330 language that provides the opportunity for locally adopted ordinances to provide greater number of units affordable to lower income households (Gov. Code § 66030.6 (c)).

Attachment:

- 1) 12-21-23 Status Report on Berkeley Demolition Ordinance Applications

Name and Telephone Number of Contact Person:

Lief Bursell, Senior Planner (510) 981-7368



Rent Stabilization Board

DATE: December 21, 2023
 TO: Honorable Members of the Rent Stabilization Board
 FROM: Lief Bursell, Senior Planner
 SUBJECT: Status Report on Berkeley Demolition Ordinance Applications

Recommendation

That the Board review the attached list of residential demolition projects proposing the elimination of rent-control units and provide direction on staff’s proposal to monitor this aspect of future applications and to update the Board on the details of any project that does not propose one to one replacement of rent-controlled units with an equal number of below market rate (BMR) units.

Residential Dwelling Unit Demolition Application Analysis

At the request of Rent Board Chairperson Simon-Weisberg, staff has prepared an update on recent development applications proposing the demolition of existing rent-controlled dwelling units that are either approved or under review. The focus of this update is to apprise the Board on the replacement of rent-controlled units and whether they include one to one replacement with new below-market rate (BMR) units.

As of the beginning of calendar year 2022, there have been ten development applications that propose the demolition of existing, multi-family residential buildings that include dwelling units subject to rent control. These applications propose the removal a total of ninety-one rent-controlled units, forty-two of which were occupied by tenants at the time Rent Board staff reviewed the application. Overall, if all projects were approved and moved forward to construction, they would result in a net gain of 27 BMR units when contrasted to the total number rent-controlled units that are proposed for replacement.

Project Status (As of 12/15/23)	# Projects	# Existing Units	Tenant Occupied	# BMR Units	Net Gain/Loss
ZAB Approved	4	30	13	24	-6
App. Complete	2	13	13	11	-2
Under Review	2	24	8	55	+31
Pre-Application	2	12	8	16	+4
Total	10	79	42	106	+27

Of the ten proposed developments applications, six applications are currently proposing at least one to one replacement of rent-controlled units with BMR units, and five are proposing additional BMR units. The largest of the proposed development projects (2138 Center Street) proposes to demolish and replace twelve rent-controlled units with forty-seven BMR units.

Of the four projects that propose less than one to one replacement, three have already been approved by Zoning Adjustments Board (ZAB), and one has a complete application that still requires a Public Hearing and ZAB decision. The table below looks at the number of existing rent-controlled units by application status, focusing are those applications that are proposing less than one to one replacement.

Project Status (As of 12/15/23)	# Projects	Less than 1 to 1 BMR replacement	# Existing Units	# BMR units	Difference
ZAB Approved	4	3	30	20	-10
App. Complete	2	1	13	10	-3
Under Review	2	0	24	24	0
Pre-Application	2	0	12	12	0
Total	10	4	79	66	-13

In total these projects propose replacing thirty-eight rent-controlled units with twenty-five BMR units, resulting in a total of thirteen rent-controlled units that are not proposed for one to one replacement with BMR units. Three of the projects in this category have already been approved by the ZAB.

The project at 2300-10 Ellsworth has a complete application that is still pending a Public Hearing in before the ZAB. This project proposes replacing twelve rent-controlled units with nine BMR units. All rent-controlled units are tenant occupied according to the Rent Board’s database. Staff has sent letters to all tenant households that would be displaced by demolition, and have been contacted by one tenant thus far.

A table with more detailed information on each of the above referenced demolition applications is attached to this report.

Continued Monitoring of Demolition Projects

The earliest Rent Board Staff learn of a new development application proposing the demolition of rent-controlled units is when an applicant submits a preliminary development project application. Under the Housing Crisis Act of 2019 (SB 330) projects that apply for a preliminary development application receive statutory vesting rights, meaning the application is only subject to the ordinances, policies, and standards adopted and in effect when the preliminary application was submitted. They are required submit a Use Permit application for the proposed project within the next 18 months in order to maintain these statutory vesting rights. Rent Board staff are typically asked to confirm whether or not the residential units are rent-controlled when these preliminary development applications are under review.

Within the preliminary development application, applicants must indicate if they are proposing to demolish any existing residential units, and whether or not the proposed development includes

the construction of any new BMR units. With this information, staff can determine whether or not the preliminary development application proposes one to one replacement at the outset and inform the Board of any applications that do not.

If no preliminary application is submitted, the earliest staff learn about the details of the proposed application is after the projects Use Permit application is submitted. Staff propose to inform the Board of any projects that do not propose one to one replacement of rent-controlled units with BMR units going forward after either the preliminary application or Use Permit application has been submitted.

In addition to informing the Board of any demolition applications that propose less than one to one replacement of rent-controlled units with BMR units, staff is committed to attending Zoning Adjustments Board meetings involving projects with rent-controlled units going forward. Staff has also been attending the Planning Commission meetings that include discussion of the proposed revisions to Demolition Ordinance. The revised Demolition Ordinance is tentatively scheduled to go in front of the Planning Commission again at its February 7th, 2023 meeting.

Demolition Project Status and Tenant Impacts

As of December 2023, none of the approved demolition projects have moved to the construction phase but the closest is the project at 2538 Durant Avenue, which has its building permit under review. This project proposes to demolish twelve rent-controlled units, eight of which were occupied when Rent Board staff reviewed the project, and replace them with six BMR units and six market rate units. Staff sent letters to all eight tenant households informing them of their rights. Staff was contacted by one tenant and assisted them by both ensuring they were aware of the applicable tenant protections and referred them to the East Bay Community Law Center for legal advice. This tenant was able to negotiate temporary relocation to another unit managed by the applicant. The tenant told Rent Board staff that they intended to finish their last semester of school at UC Berkeley before graduation and then move away from Berkeley. Staff have confirmed all other tenants have since moved out of the property.

Staff have also been contacted by three long-term tenants who are interested in the possibility of taking advantage of their rights to temporarily relocate and move back to a replacement unit once construction is complete. Planning and Rent Board staff have agreed to require the applicants submit signed relocation agreements with each tenant prior to receiving approval for their building permits.

Staff are also working with Planning staff to improve the tenant notification process when demolition applications involving tenant occupied units are submitted. Staff will share more details once we have an agreement with Planning on an improved notification process.

Background Information

The City of Berkeley's Demolition Ordinance (BMC 23C.08) seeks to maintain and increase affordable housing, provide protections to existing tenants, and further the City's policy to increase the housing supply through the creation of new, larger housing projects. The Ordinance was most recently revised by the City Council in March of 2016. The Ordinance currently

allows for demolitions of rent-controlled units, but requires the applicant to mitigate the impact of the loss of these older, more affordable residential units. The 2016 revision clarified what conditions are required to mitigate the loss of affordability when rental-controlled units are demolished, and provided the option of either the payment of a mitigation fee or the creation of below-market rate (BMR) replacement units. The 2016 revisions also added a five-year prohibition on demolition if a building was removed from the rental market under the Ellis Act, and a three-year prohibition on demolition if there are any verified cases of tenant harassment, threatened illegal eviction, or actual illegal eviction.

The 2016 Ordinance revisions were never fully implemented because they reference a City Council adopted resolution setting both the mitigation fee level, and the required affordability level for BMR replacement units. A resolution setting these levels was never adopted by City Council. The Demolition's Ordinance lack of a specific mitigation fee amount, and a below market-rate replacement unit requirement with no set affordability level (or process for calculating it), has caused confusion for potential applicants and unfortunately led to outcomes where applicants electing the mitigation fee option have paid a lower than anticipated fee or no fee at all.

SB 330: The Housing Crisis Act of 2019

SB 330 created a number of state laws regarding the production, preservation, and planning for housing. It was effective January 1, 2020 and applies to all housing development projects submitted before January 1, 2025. However, Governor Gavin Newsom signed SB 8 into law in September of 2021, which modified and extended the Housing Crisis Act of 2019 until 2030.

Under SB 330, as modified by SB 8, any existing unit that is classified as a "protected unit" must be replaced after demolition. This includes units that were rented by lower or very low-income households and units that "are or were subject to any form of rent or price control through a public entity's valid exercise of its police power within the past five years." This replacement requirement had the effect of preempting Berkeley's Demolition Ordinance mitigation fee option. Any protected units must be replaced in the same or lower income category as the most recent tenant households that occupied the unit within the five-year period preceding application.

If the incomes of the last households in occupancy are unknown, it is presumed that lower income renter households occupied the units in the same proportion as other lower income renter households in Berkeley, as determined from the most recently available data from HUD's Comprehensive Housing Affordability Strategy (CHAS) database. The CHAS calculations result in existing residential units being replaced by BMR units at a variety of income levels, from extremely low to low income level. When the calculations result in an income level greater than 80% AMI, only market rate replacement units are required. The CHAS dataset for Berkeley is attached.

SB 330 also offers relocation assistance, a right of first refusal to return to a comparable unit at an affordable rent upon project completion, and the right to remain in their unit until six months prior to the start of construction.

Rent Board Application Review

Rent Board staff review development applications that include demolition of residential units and assist the Planning Department by providing a report to the Planning Department that covers the following:

1. Rental unit occupancy status
2. Property or buildings history under rent control
3. Information on any recent Ellis Act evictions
4. Information on verified cases of harassment, or actual illegal eviction from Rent Board records.
5. Proposed conditions of approval to mitigate projects impact to existing tenants

Rent Board staff also work to ensure existing tenants of buildings with demolition applications are informed of their rights, including the applicable tenant protections under the Demolition Ordinance and the Rent Stabilization Ordinance.

Attachments:

- 1) 2022-2023 Demolition Project Information
- 2) HUD CHAS Database for Berkeley
- 3) Anti-Eviction Mapping Project Report: Densifying Berkeley: Potential Impacts on Berkeley

Name and Telephone Number of Contact Person:

Lief Bursell, Senior Planner (510) 981-7368

Application Date	Project Address	Application Type	Application Status	Project Description	# Existing Residential Units Proposed for Demolition	# Tenant Occupied Units	# Replacement Units	One to One Replacement with BMR?	Total BMR Units	Council District
5/20/2023	1790 University	Use Permit	Application Complete (12/6/2023)	Construct a five-story mixed-use building containing 17 dwelling units and ground floor commercial space.	1	1	1 BMR	Yes	2	4
4/26/2023	2127-59 Dwight Way	Use Permit	Approved by ZAB (11/30/2023)	Construct a six-story multi-family building, with 58 new dwelling units	8	5	7 BMR	No	7	4
2/10/2023	2300-10 Ellsworth St.	Use Permit	Application Complete (9/21/2023)	Construct a seven-story residential building with 69 units.	12	12	9 BMR	No	9	7
1/23/2023	2601 San Pablo Avenue (1110-12 Parker and 2609 San Pablo)	SB 330 Pre-App	SB 330 Preliminary Application Complete (12/5/2023)	Merge six parcels and construct an eight-story mixed-use residential development with 242 dwelling units	4	2	4 BMR	Yes	4	2
12/2/2022	3030 Telegraph (aka 2330-36 Webster)	Use Permit	Approved by ZAB on 6/08	Construct 5-Story mixed-use building with 144 dwellings	4	0	4 BMR	Yes	8	8
11/14/2022	2538 Durant	Use Permit	Approved on consent by ZAB on 4/27/2023	Demolish 12 dwelling units & develop an eight-story residential building with 83 units	12	8	6 BMR	No	6	7
10/20/2022	2138 Center Street (aka 2128 Oxford)	Use Permit	Application under review	Merge two lots to construct a 17 story mixed-used building with 485 dwelling	16	0	16 BMR	Yes	47	4
9/22/2022	2427-33 San Pablo Avenue	Use Permit	Application under review	Construct a five-story residential replacement apartment units and Group Living Accommodation (GLA)	8	8	8 BMR	Yes	8	2
5/10/2022	1827 & 1899 Oxford	SB 330 Pre-App	SB 330 Preliminary Application Under Review	Construct 118 new dwellings with 12 BMR	8	6	8 BMR	Yes	12	6

Comprehensive Housing Affordability Strategy ("CHAS") data

Summary Level: City

Created on: December 20, 2023

Data for: Berkeley city, California

Year Selected: 2016-2020 ACS

Income Distribution Overview	Owner	Renter	Total	
Household Income less-than or= 30% HAMFI	1,485	8,550	10,035	
Household Income >30% to less-than or= 50% HAMFI	1,170	3,820	4,990	
Household Income >50% to less-than or= 80% HAMFI	2,035	3,675	5,710	
Household Income >80% to less-than or=100% HAMFI	1,435	1,930	3,365	
Household Income >100% HAMFI	13,555	8,225	21,780	
Total	19,680	26,205	45,885	
Housing Problems Overview 1	Owner	Renter	Total	
Household has at least 1 of 4 Housing Problems	5,485	13,850	19,335	
Household has none of 4 Housing Problems	14,195	12,355	26,550	
Cost burden not available, no other problems				
Total	19,680	26,205	45,885	
Severe Housing Problems Overview 2	Owner	Renter	Total	
Household has at least 1 of 4 Severe Housing Problems	2,700	9,125	11,825	
Household has none of 4 Severe Housing Problems	16,980	17,080	34,060	
Cost burden not available, no other problems				
Total	19,680	26,205	45,885	
Housing Cost Burden Overview 3	Owner	Renter	Total	
Cost Burden less-than or= 30%	14,350	12,325	26,675	
Cost Burden >30% to less-than or= 50%	2,815	4,990	7,805	
Cost Burden >50%	2,355	8,085	10,440	
Cost Burden not available	150	810	960	
Total	19,680	26,205	45,885	
Income by Housing Problems (Owners and Renters)	Household has at least 1 of 4 Housing Problems	Household has none of 4 Housing Problems	Cost Burden not available, no other housing problem	Total
Household Income less-than or= 30% HAMFI	8,290	1,745		10,035

Late Communications
 Planning Commission
 January 17, 2024

Household Income >30% to less-than or= 50% HAMFI	4,105	885		4,990
Household Income >50% to less-than or= 80% HAMFI	2,850	2,860		5,710
Household Income >80% to less-than or= 100% HAMFI	1,345	2,020		3,365
Household Income >100% HAMFI	2,735	19,045		
Total	19,335	26,550		45,885
Income by Housing Problems (Renters only)	Household has at least 1 of 4	Household has none of	Cost Burden not available,	Total
	Housing Problems	4 Housing Problems	no other housing problem	
Household Income less-than or= 30% HAMFI	7,050	1,500		8,550
Household Income >30% to less-than or= 50% HAMFI	3,335	490		3,820
Household Income >50% to less-than or= 80% HAMFI	1,900	1,775		3,675
Household Income >80% to less-than or= 100% HAMFI	755	1,175		1,930
Household Income >100% HAMFI	805	7,420		8,225
Total	13,850	12,355		26,205
Income by Housing Problems (Owners only)	Household has at least 1 of 4	Household has none of	Cost Burden not available,	Total
	Housing Problems	4 Housing Problems	no other housing problem	
Household Income less-than or= 30% HAMFI	1,240	245		1,485
Household Income >30% to less-than or= 50% HAMFI	770	395		1,170
Household Income >50% to less-than or= 80% HAMFI	950	1,085		2,035
Household Income >80% to less-than or= 100% HAMFI	590	845		1,435
Household Income >100% HAMFI	1,930	11,625		13,555
Total	5,485	14,195		19,680
Income by Cost Burden (Owners and Renters)	Cost burden > 30%	Cost burden > 50%	Total	
Household Income less-than or= 30% HAMFI	8,080	6,820	10,035	
Household Income >30% to less-than or= 50% HAMFI	4,010	2,115	4,990	
Household Income >50% to less-than or= 80% HAMFI	2,545	990	5,710	

Household Income >80% to less-than or= 100% HAMFI	1,255	190	3,365	
Household Income >100% HAMFI	2,360	325	21,780	
Total	18,250	10,440	45,885	
Income by Cost Burden (Renters only)	Cost burden > 30%	Cost burden > 50%	Total	
Household Income less-than or= 30% HAMFI	6,855	5,895	8,550	
Household Income >30% to less-than or= 50% HAMFI	3,290	1,695	3,820	
Household Income >50% to less-than or= 80% HAMFI	1,640	445	3,675	
Household Income >80% to less-than or= 100% HAMFI	710	15	1,930	
Household Income >100% HAMFI	580	35	8,225	
Total	13,075	8,085	26,205	
Income by Cost Burden (Owners only)	Cost burden > 30%	Cost burden > 50%	Total	
Household Income less-than or= 30% HAMFI	1,225	925	1,485	
Household Income >30% to less-than or= 50% HAMFI	720	420	1,170	
Household Income >50% to less-than or= 80% HAMFI	905	545	2,035	
Household Income >80% to less-than or= 100% HAMFI	540	175	1,435	
Household Income >100% HAMFI	1,780	290	13,555	
Total	5,170	2,355	19,680	

1. The four housing problems are: incomplete kitchen facilities, incomplete plumbing facilities, more than 1 person per room, and cost burden greater than 30%.
2. The four severe housing problems are: incomplete kitchen facilities, incomplete plumbing facilities, more than 1 person per room, and cost burden greater than 50%.
3. Cost burden is the ratio of housing costs to household income. For renters, housing cost is gross rent (contract rent plus utilities). For owners, housing cost is "select monthly owner costs", which includes mortgage payment, utilities, association fees, insurance, and real estate taxes.