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INFORMATION BULLETIN: REPLACEMENT UNIT DETERMINATION HOUSING CRISIS ACT OF 2019, AS AMENDED BY SB 8 AND AB 1218

The Housing Crisis Act of 2019 (HCA), as amended by SB 8 and AB 1218 (California Government Code Section 66300 et seq.), prohibits the approval of any proposed development project ("Project") on a site ("Property") that will require demolition of existing residential dwelling units, or occupied or vacant Protected Units, unless the Project replaces those units as specified below. The provisions of AB 1218 apply to all development projects approved by the City on or after January 1, 2024 that involve the demolition or removal of a dwelling unit, with exceptions for certain industrial projects. AB 1218 clarifies that the obligation to replace Protected Units does not apply to any units demolished prior to January 1, 2020. The HCA applies to all development projects through 2034 when a development application is submitted to the City before January 1, 2030.

Application for an HCA Replacement Unit Determination (RUD)

Projects subject to the HCA that do not qualify to utilize the No Net Loss Declaration must complete an application for an HCA Replacement Unit Determination (RUD) with LAHD. Information provided by the applicant and existing tenant(s), as well as information gathered by LAHD, will be used to determine whether any Protected Units and affordable Protected Units exist. An HCA RUD can take 12 to 16 weeks to process upon receipt of all the required documents. The HCA RUD for projects that qualify for processing under Executive Directive 1 may be completed within 30 days upon receipt of all required documents. The HCA RUD for projects that qualify for processing under Executive Directive 7 will be processed in an expedited manner. Owners will be provided with the completed HCA RUD and a copy will be sent to LACP for discretionary projects or LADBS for ministerial (by-right) projects. For questions about the HCA RUD application or process, please contact LAHD at LAHD-LandUse@lacity.org.

Replacement of Existing Residential Dwelling Units

The Project shall provide at least as many residential dwelling units as the greatest number of residential dwelling units that existed on the Property within the past 5 years.

Replacement of Existing or Demolished Protected Units

The Project must also replace all existing Protected Units, and Protected Units demolished on or after January 1, 2020. Protected Units are residential dwelling units on the Property that are, or were, within the 5 years prior to the date of application for a HCA RUD: (1) subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income within the past five years; (2) subject to any form of rent or price control through a public entity's valid exercise of its police power within the past 5 years; (3) rented by lower or very low income households within the past 5 years; or, (4) Residential dwelling units that were withdrawn from rent or lease in accordance with the Ellis Act within the past 10 years.

Whether a unit qualifies as an affordable Protected Unit is determined by the income level of the current or last known renter household in occupancy. If a low or below low income tenant currently occupies the Property, affordable replacement will be required at Extremely Low Income, Very Low Income and/or Low Income based on tenant income information, *regardless of the entitlement (such as Density Bonus) requested for the proposed project*. If the unit is vacant, the income of the last known tenant will be used to determine the affordability of the replacement unit.

For Projects with existing, occupied units that are not subject to the Uniform Relocation Assistance and Real Property Acquisition Act (URA), a third-party contractor will collect the income information of the occupants using the following steps:

- Applicants will provide the contact information of the tenants. Using this information, the contractor will prepare and send out informational packages to the Property unit addresses, which include a Tenant Income Certification (TIC) form, information about their Right to Return, and information about monetary relocation assistance payments to tenants being evicted through no fault of their own under the Rent Stabilization Ordinance (RSO). Tenants have 30 days to respond.
- If tenants do not respond, the contractor will follow up with at least two calls and two letters to answer any questions. If phone contact information is not available, the contractor will mail three letters to the unit address two weeks apart.
- If tenants respond, the contractor will assist them in completing the TIC form and submit the completed form to LAHD for review.

For Federally-funded projects subject to the URA, the owner/applicant must submit a Relocation Plan to the Finance Development Officer that includes an explanation of how the project will comply with the RSO, Ellis Act, and HCA. Where applicable, the most restrictive requirements will prevail.

In the absence of tenant documentation, affordability will default to the percentage of extremely low, very low or low income renters in the jurisdiction as shown in the latest U.S. Department of Housing and Urban Development (HUD) Comprehensive Housing Affordability Strategy (CHAS) database. As of September 2023, the default percentages are:

- 31% extremely low income, 18% very low income and 20% low income for Transit Oriented Communities (TOC) projects;
- 49% very low income and 20% low income for Density Bonus projects or projects not requesting any entitlements;
- The remaining 31% of the units are presumed above-low income.

All replacement calculations resulting in fractional units shall be rounded up to the next whole number.

If a low or below low income tenant occupies the Property after the HCA RUD application submission and prior to construction of the proposed project, affordable replacement and the right to return may apply.

Replacement of Protected Units Subject to the RSO Last Occupied by Persons or Families at Moderate Income or Above
The City has the option to require that the Project provide: (1) replacement units affordable to low income households for a period of 55 years, subject to a recorded covenant), OR (2) require the units to be replaced in compliance with the RSO.

Tenant Noticing, Relocation, Right to Return, Right to Remain

- All existing occupants must be allowed to occupy their units until six months before the start of construction activities.
- The project proponent shall 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.
- Any existing occupants that are required to leave their units shall be allowed to return at their prior rental rate if the demolition does not proceed and the Property is returned to the rental market.

All existing Lower Income Household (as defined in California Health and Safety Code Section 50079.5) occupants of Protected Units are also entitled to:

- Relocation benefits also subject to Government Code Section 7260 et seq., and
- The right of first refusal ("Right to Return") to a comparable unit (same bedroom type) at the completed Project. If at the time of lease up or sale (if applicable) of a comparable unit, a returning occupant remains income eligible for an "affordable rent" (as defined in California Health and Safety Code Section 50053) or if for sale, an "affordable housing cost" (as defined in California Health and Safety Code Section 50052.5), owner must also provide the comparable unit at the "affordable rent" or "affordable housing cost," as applicable. The Right to Return does not apply to: (1) a Project that consists of a Single Family Dwelling Unit on a site where a Single Family Dwelling unit is demolished, or (2) a Project that consists of 100% lower income units (excluding any Manager's Unit(s)), unless the occupant of a Protected Unit qualifies for residence in the new development and for whom providing a comparable unit would not be precluded due to unit size limitations or other requirements of one or more funding source of the Project.

Where it is determined that an affordable Protected Unit exists and the tenant does not have a Right to Return in the future project, the affordable replacement unit(s) must contain at least the same total number of bedrooms as the unit(s) being replaced. For example, an existing five (5) bedroom affordable Protected Unit where no Right to Return applies, will need to be replaced with a unit or units that total five (5) bedrooms (ex. one (1), five (5) bedroom unit or five (5), one (1) bedroom units). Studio or single-room units do not count as a one (1) bedroom.

The project proponent shall provide existing occupants with written notice of the planned demolition, the date they must vacate and their right under the HCA. This notice shall be provided at least six months prior to the date the existing occupants must vacate the units. Any existing occupants who are required to leave their units shall be allowed to return at their prior rental rate if the demolition does not proceed and the Property is returned to the rental market.

Note: The proportion of bedroom-types for all units in the proposed project AND the affordable Protected Unit replacement requirements will be reviewed and considered at the covenant stage. If a unit is required to be replaced as affordable according to current tenant-income information, the unit shall be replaced with the same bedroom-type unit. If the default per HUD CHAS is applied, the most restrictive requirements between the Affordable Housing Incentives Guidelines (if applicable) and replacement requirements will apply. Affordable units must be dispersed throughout the proposed project and there should be no detectable pattern. For example, the affordable units should be proportionally distributed on each of the floors, and should not be located within the same vertical stack or grouped together.

Warning: Government Code Section 66300.6(b)(3), (4) does not tie benefits afforded to "existing occupants" with any set time period. Therefore, "existing occupants" in place after the issuance of this RUD may also be entitled to benefits.

Single Family Dwelling Units Replacement

Where an affordable Protected Unit consists of a Single Family Dwelling (SFD) and the tenant has a Right to Return in the future project, a comparable affordable replacement unit is defined as follows:

- If the existing SFD contains three (3) or fewer bedrooms, the affordable replacement unit(s) must contain the same number of bedrooms.
- If the existing SFD contains four (4) or more bedrooms, the affordable replacement unit(s) must contain at least three (3) bedrooms. However, the total number of bedrooms in the existing SFD must be replaced as affordable units.
- The affordable replacement unit(s) is not required to have the same or similar square footage or same number of total rooms as the existing SFD.

For example, if a tenant with the Right to Return occupied an existing protected five (5) bedroom SFD, the applicant may provide that tenant with one (1), three (3) bedroom affordable replacement unit. In addition, the applicant must provide one (1), two (2) bedroom unit or two (2), one (1) bedroom units, therefore replacing all five (5) bedrooms that existed as affordable. If there are no tenants with the Right to Return, the affordable replacement units may be split up into smaller units as long as the total number of bedrooms are replaced as affordable units.

Unpermitted Use of Residential Dwelling Units

Unpermitted uses may result in the City requiring affordable replacement units according to the HUD CHAS default.

- If a single residential dwelling unit is being used for the owner's personal non-residential space and evidence that no rental income was collected is provided, the City may not require the unit to be replaced as an affordable Protected Unit.
- If the property contains three residential dwelling units or more and is being used for non-residential purposes, replacement requirements with affordability levels per the HUD CHAS database will apply, regardless of whether commercial rents were collected.

Executive Directives 1 and 7 (ED 1 and ED 7)

A project may be eligible for ED 1 expediting if it is a 100% affordable housing project that meets the requirements of ED 1 (as revised on July 1, 2024). Please visit <https://planning.lacity.org/project-review/executive-directive-1> for more information on whether the project meets the requirements. In order to qualify for ED 1, owners must provide and meet the following requirements:

- Complete and submit the Property Owner Declaration of Eligibility for ED 1 with the HCA RUD application unless the project has an existing affordability covenant;
- Any accessory dwelling unit (ADU) proposed in a project utilizing ED 1 will be required to be affordable, whether the ADU is proposed at the covenant stage or after the covenant is recorded. If the ADU is proposed after the covenant is recorded, an amended and restated covenant will be required to restrict the ADU as affordable;
- The project must not be located on a parcel or parcels containing 12 or more total RSO units that are or were occupied within the last five (5) years;
- The project shall replace all existing RSO units and RSO units demolished on or after January 1, 2020 pursuant to the replacement requirements of California Government Code Section 65915(c)(3). The project shall also comply with the following:
 - If the income level of occupants is unknown, or if the income is above lower income, the units shall be replaced according to Sec. 65915(c)(3)(C)(i) (i.e. the unit will be replaced as Low Income); and
 - If the units are occupied by lower income households that intend to exercise the right to return, the units shall be replaced with an affordable unit subject to a recorded covenant so that rent is affordable to extremely low, very low, or low income households depending on the income of the household, as verified by the Los Angeles Housing Department.

- Returning tenants exercising the right of first refusal for a comparable affordable replacement unit shall be offered a new unit in the proposed development at an initial rate no higher than the most recent lawful rent for their prior unit if the prior unit was subject to the RSO, unless the affordable rent based on the household's income is lower, in which case the affordable rent shall be the initial rental rate. Thereafter, rent increases for such tenants shall not exceed the allowable rent increase for rent stabilized units under LAMC Chapter XV, and this limitation shall be included in the covenant recorded for the affordable replacement unit; and
- Prior to the issuance of a building permit for a 100% affordable housing project, a covenant acceptable to the Los Angeles Housing Department shall be recorded with the Los Angeles County Recorder guaranteeing that the affordability of units contained in such projects, including any required affordable replacement units, will be observed for at least 99 years from the issuance of the Certificate of Occupancy, except for a 100% affordable housing project which receives any form of public subsidy that is tied to a specified covenant period including Low Income Housing Tax Credits, as verified by the Los Angeles Housing Department, in which case all restricted affordable units shall be covenanted for at least a period of 55 years for rental units, or 45 years for for-sale units.

If the proposed project contains 20% or more of the total units at Low Income or below, or 40% of the total units at Moderate Income or below, it may qualify for ED 7.

If an application indicates that a project is eligible for ED 1 or ED 7, and the project changes or is later determined to not qualify after the HCA RUD has been issued, a revised HCA RUD will be required and the standard processing timeline will apply, along with the applicable fees.

Term of the Issued HCA RUD

The findings on this determination are final and effective upon distribution of this determination.

LAHD will only amend the determination in the event of a staff error or if misinformation was provided by the applicant. If the project changes or the project has been closed, a new RUD will be required.