



# COUNCIL REPORT

**DATE:** September 13, 2022  
**CATEGORY:** New Business  
**DEPT.:** Community Development  
**TITLE:** **SB 330 Replacement Requirements**

## **RECOMMENDATION**

Approve a policy requiring that demolished “protected units” be replaced under Senate Bill 330 with deed-restricted units affordable to households earning 80% of area median income or below when the prior tenants of those protected units earned, or are presumed to have earned, more than 80% of AMI, and direct staff to incorporate this policy into administrative guidelines and procedures for development applications.

## **BACKGROUND**

Senate Bill 330 (SB 330), also known as the Housing Crisis Act of 2019, was approved by the Governor of California on October 6, 2019. SB 330 went into effect Statewide on January 1, 2020 and sunsets in 2030.<sup>1</sup> One of the key purposes of SB 330 is to prevent the loss of affordable housing through replacement of “protected units” and to address the displacement of lower-income tenants. The bill includes several requirements that must be met by residential projects. Since SB 330 went into effect, the City has reviewed several residential projects for compliance with the requirements.

In addition to State law, staff has been working on an affordable housing strategy, including a local displacement response strategy and an assessment of no net loss of affordable housing as part of the Council work plan. The displacement response strategy is intended to be a comprehensive, multi-pronged approach and will include the development of a local replacement requirement in anticipation of SB 330 sunset as well as to potentially address areas not covered by SB 330.

### *SB 330 Replacement Requirements*

SB 330 provides jurisdictions some discretion regarding how to implement the requirements, specifically regarding project requirements for the replacement of “protected units” that are

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<sup>1</sup> SB 330 was initially passed to sunset in 2025. A subsequent bill, SB 8, extended its sunset date from 2025 to 2030.

demolished as part of a residential project. While SB 330 includes several elements, this report focuses on a specific provision that gives the City discretion relating to the replacement of Community Stabilization and Fair Rent Act (CSFRA) units previously inhabited by households who earn incomes above 80% of area median income (AMI). SB 330 defines a “protected unit” as one of the following:

1. Residential dwelling units that are or were 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. Residential dwelling 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.
3. Residential dwelling units that are or were occupied by low- or very low-income households within the past five years.
4. Residential dwelling units that were withdrawn from rent or lease in accordance with Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 within the past 10 years.

Under Item 2 above, rent-stabilized units in Mountain View covered by the CSFRA are considered protected units. SB 330 has different replacement requirements depending on the household

incomes of the prior tenants occupying the demolished protected units, as summarized in Table 1 below:

**Table 1: SB 330 Replacement Requirements for Protected Units**

	<b>Protected Units and Household Income of Previous Tenants 80% AMI or Less</b>	<b>Protected Units and Household Income of Previous Tenants Unknown</b>	<b>Protected Units and Household Income of Previous Tenants Greater than 80% AMI</b>
<b>Replacement Requirements</b>	Protected units to be replaced at the income level of the previous tenants residing in the property.	Utilize Comprehensive Housing Affordability Strategy (CHAS) data from the United States Department of Housing and Urban Development to estimate likely income of previous tenants.	Jurisdiction has discretion to: <ul style="list-style-type: none"> <li>a. Require the protected units be replaced with deed-restricted units at 80% AMI; or</li> <li>b. Require the protected units be replaced as CSFRA units (the rents would initially be set at market rents, and the allowable annual rent increase would be limited going forward per the CSFRA).</li> </ul>

The City only has discretion in the situation where the household income is greater than 80% AMI (Table 1, Column 4, lightly shaded). This provides an area of opportunity for the City to decide the course of action in cases where the previous tenants earned above 80% AMI. Projects where this choice must be made—between replacement as low-income, deed-restricted units or CSFRA units—will not necessarily require Council approval during the entitlement process, as some projects will require only a Zoning Administrator decision; therefore, staff requests Council direction on this policy to provide clarity and consistency for both developers and staff as residential projects involving demolition of protected units move through the entitlement process.

**ANALYSIS**

Staff recommends that when CSFRA units are being replaced under SB 330 and the former tenants earned above 80% AMI, the replacement units be deed-restricted at the “low-income” (80% AMI) affordability level or lower (Table 1, Column 4, Option a) for the following reasons:

- The original units being replaced would be older units, rent-stabilized units, and, therefore, likely rented at a monthly rate below market rents before demolition, making the units naturally occurring affordable housing. If the units are replaced as new rent-stabilized units, the initial rents will be at market rate for new units (also known as vacancy decontrol), which would likely be considerably higher than prior rents; however, if the units are deed-restricted to 80% AMI, they would remain affordable, resulting in no net loss of affordable units. Table 2 below demonstrates this point:

**Table 2: Rent Rate Comparison**

	<b>Average CSFRA Rents*</b>	<b>Average Non-CSFRA Rents**</b>	<b>80% AMI Rents***</b>
Studio	\$2,173	\$2,738	\$2,306
One bedroom	\$2,402	\$4,137	\$2,635
Two bedrooms	\$3,156	\$5,223	\$2,965
Three bedrooms	\$4,105	\$5,785	\$3,293

\* Fiscal Year 2021-22 rents

\*\* Fiscal Year 2021-22 Costar rents

\*\*\* Based on 2022 State Housing and Community Development income limits

- Creating a separate City program for replacement units in a residential project that include both deed-restricted units (per the City’s below-market-rate (BMR) requirement) and new CSFRA units would create greater ongoing administrative complexity to track, monitor, and enforce the project requirements. Having all the replaced units as deed-restricted units would reduce the administrative burden.

**NEXT STEPS**

If Council approves the recommendation, staff will immediately update the City’s SB 330 policies and procedures and provide the information to residential projects subject to SB 330 replacement requirements for protected units.

**ALTERNATIVES**

1. Approve a policy requiring the protected units where the former tenants had household incomes above 80% AMI to be replaced as CSFRA units, which would have initial rents set at market rents (Table 1, Column 4, Option b).
2. Provide other direction.

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