

DATE: October 10, 2023
TO: Honorable Mayor and City Council
FROM: Wayne Chen, Housing Director
VIA: Kimbra McCarthy, City Manager
TITLE: **Displacement Response Strategy—Local Replacement Requirements**



STUDY SESSION MEMO

PURPOSE

Receive Council feedback on the timing and approach for implementing local replacement requirements as part of the City’s Displacement Response Strategy.

BACKGROUND

Mountain View has approximately 39,200 housing units, of which 24,000 units are rentals. In 2016, Mountain View voters passed Measure V, also known as the Community Stabilization and Fair Rent Act (CSFRA). Of the 24,000 rental units, the CSFRA covers nearly 15,000 rental units. Most of the units are older properties built before February 1995 and are “fully covered” under the CSFRA, meaning the entirety of the CSFRA is applicable, including allowable annual rent increases. Units built between February 1995 and December 2016 are “partially covered,” meaning only the just-cause eviction provisions of CSFRA are applicable. Rental units built after 2016 are not covered by the CSFRA at all. Because CSFRA units comprise over 60% of all rental units and nearly 40% of the City’s total housing stock, impacts to CSFRA units can have a major impact on a significant percentage of the City’s population.

Since 2012, nearly 1,000 older, naturally affordable rental units located in the City’s R3 Zoning District have been demolished or are pending demolition as part of residential redevelopment projects (demolition units). These units are either covered by the CSFRA or would have been covered by the CSFRA had the program existed in 2012.

As a result, responding to tenant displacement due to demolition of CSFRA units is a top priority and has been included in the Council’s Strategic Work Plan in both Fiscal Years 2019-21 and Fiscal Years 2021-23 to advance the City’s “Community for All” and “Intentional Development and Housing Options” Strategic Priorities. Actions to date include:

- Council has held two Study Sessions to provide direction on the development of the City’s Displacement Response Strategy (Strategy), one in October 2019 and the other in September 2020.

- Council held a Study Session in August 2022 to discuss the 2022-27 Affordable Housing Strategic Plan, which includes Strategy 4 to develop a robust antidisplacement program and to hold a Study Session on local replacement requirements in 2023.
- The City’s certified 2023-31 Housing Element includes several items related to tenant displacement, which responds to the State’s strong focus on tenant protections and affirmatively furthering fair housing.

During the COVID-19 pandemic, most of staff’s capacity was directed at emergency response efforts, such as the Rent Relief Program, and advancing the affordable housing project pipeline, with some limited work directly on the Displacement Response Strategy. At the beginning of 2023, staff resumed focused effort on developing the Strategy, including holding a comprehensive outreach process and evaluating options for multiple components of the Strategy.

Tonight’s Council meeting will focus specifically on the topic of local replacement requirements, which is a key component of the City’s Strategy. A second Study Session is anticipated to be held in early Q1 2024 to discuss the other components of the Strategy. **The two-part Study Session is necessary to provide sufficient time for Council to provide policy direction to shape the comprehensive Strategy.**

This Background section provides:

- A summary of prior Council direction related to the overall Strategy as well as direction related specifically to local replacement requirements.
- Key data points summarizing the extent of CSFRA demolitions, the net loss of such “protected units” in Mountain View, and the impacts on tenants.
- A summary of community input related specifically to local replacement requirements.

The Discussion section includes:

- Explanation of Senate Bill (SB) 330 and how the City is implementing the State replacement requirements.
- Review of other relevant State laws (including Costa-Hawkins, the Ellis Act, Assembly Bill (AB) 1505, and Housing Element law) and their impact on the City’s ability to implement local replacement requirements.

- Relationship of the R3 Zoning District Update work plan item to local replacement requirements.
- Recommendation for timing of adoption of local replacement requirements.
- Options and recommendations for a framework for local replacement requirements.

Summary of Prior Council Direction on Overall Strategy

Council held two Study Sessions, one in October 2019 (Attachment 1) and another in September 2020 (Attachment 2), to determine key principles and initial focus areas to guide development of the overall Strategy. Council unanimously supported five key principles as shown in Table 1.

Table 1: Five Key Principles for Displacement Response Strategy

Key Principles	What It Means
1. The Strategy should be multi-pronged and integrated.	Includes different policies and programs working together.
2. The Strategy should be broad-based.	Includes actions to prevent displacement as well as reduce the impacts of displacement.
3. The Strategy should include a collaborative/multi-sectoral approach.	Work with other organizations to address tenant displacement.
4. The Strategy should focus on tenants.	Focus on tenants as opposed to homeowners, specifically CSFRA tenants.
5. The Strategy should be unit- and place-based.	Prioritize tenants from being displaced from their units. If that is not possible, keep them from being displaced from Mountain View.

Council also unanimously supported six initial policy/program focus areas as shown in Table 2 below. Table 2 summarizes the Council direction provided for each of the six focus areas during the 2020 Study Session, with a status of each.

However, tonight’s Council meeting is focused on local replacement requirements (Items 1 and 6 as shaded in Table 2). The remaining items (Items 2 through 5) will be discussed in a separate Study Session to be held in Q1 2024.

Table 2: Six Initial Policy/Program Focus Areas

Initial Policy/Program Priorities	Direction from 2020 Study Session
1. Evaluate local replacement requirements for redevelopment projects.	Coordinate efforts with R3 update project and focus on locally determined replacement requirements post-SB 330 for CSFRA units.
2. Evaluate an acquisition/preservation program.	City’s role is funder, not developer or landlord. Evaluate local funding and program design options as part of next steps.
3. Modify the Tenant Relocation Assistance Ordinance (TRAO).	Modified in 2020 to increase eligibility and benefits.
4. Evaluate a “landlord-rental set-aside” program.	Continue to explore this concept.
5. Evaluate a tenant-selection preference for displaced tenants.	Initial review identified potential fair housing issues and was not recommended.
6. Evaluate potential modifications to the City Code or other regulatory/policy documents to implement the Strategy.	Explore development of Ellis Act ordinance to allow the City to require replacement requirements for demolished rent-stabilized units.

Summary of Prior Council Direction Specific to Local Replacement Requirements

The following summarizes Council’s past direction specifically related to local replacement requirements:

- Study local replacement requirements, no net loss options, and first right of return provisions (October 29, 2019 displacement response Study Session).
- Evaluate local replacement requirements that would go into effect after SB 330 sunsets for units covered by the CSFRA (September 22, 2020 displacement response Study Session).
- Adopt a local Ellis Act ordinance for replacement requirements (August 30, 2022 Affordable Housing Strategic Plan Study Session).

Key Data on Demolition of CSFRA Units, New Replacement Units, and Tenant Relocations

As noted, since 2012, nearly 1,000 older, naturally affordable units have been demolished or are slated to be demolished as part of 30 redevelopment projects. These include current CSFRA units as well as older units that would have been covered under the CSFRA but were demolished prior to its passage in 2016 (collectively referred to as “CSFRA demolition units” for the purposes of this memorandum).

Eighteen (18) of the 30 projects have been completed. Of the remaining 12 projects, eight have received building permits and four have received planning approvals but not building permits. These demolition projects/units have the following characteristics:

- Most of the units are in the R3 Multiple Family Zoning District or P (Planned Community) Zoning District that reference R3 standards.
- Eighty-one percent (81%) are older units built between 1950 and 1970.
- Generally, demolition properties tend to be smaller apartment complexes. The average size of a demolition property is approximately 32 units. Prior to the CSFRA, the average size of demolition properties was approximately 15 units. After the CSFRA went into effect, the average size of demolition properties was approximately 40 units.

New Replacement Units

The 30 projects are expected to produce almost 2,300 total new housing units once they are all completed, resulting in approximately 1,300 net new units (after subtracting the 1,000 CSFRA demolition units), significantly exceeding the goal of no net loss of total units. Eight hundred fifty (850) of the 2,300 new units will be for-sale market-rate condo or rowhouse/townhome units. Nearly 1,000 units will be new market-rate rental projects achieved through significant density increases.

The remainder of the new units are deed-restricted units (412 units) either through Below-Market-Rate (BMR) requirements or 100% affordable housing projects. This means that less than half of the 1,000 CSFRA demolition units (which are considered protected units) will be replaced with new, affordable units, resulting in a net loss of protected units. The remaining CSFRA demolition units will be replaced by the new market-rate units noted above. Essentially, even though there will be a significant increase in the supply of total units through the 30 redevelopment projects, most of the new units will be at market prices that are not attainable for lower-income residents.

Note that while the City has a robust pipeline of affordable housing projects, these projects are necessary to meet existing needs and the City’s regional housing needs allocation and are not

intended to count toward replacing demolished CSFRA units. Demolished units only add to the City's existing housing needs. The intent of replacement requirements is that a redevelopment project mitigates the impacts of the loss of the CSFRA units they demolish by creating new affordable housing as part of the redevelopment project.

Tenant Relocation

Of the 30 redevelopment projects, data exists for 24 projects regarding the number of households receiving tenant relocation benefits. Of the 24 projects, 750 units were occupied at the time the Notice of Intent about the redevelopment projects was sent by the developers to the tenants. Four hundred sixty (460) households received relocation benefits. There is no data on the other 290 households. Staff's experience is that households that do not qualify typically make a self-determination that they are not eligible for the benefits and therefore decide on their own not to submit an application.

Additionally, out of the 24 redevelopment projects, there is some limited data (six projects) regarding where the tenants relocated to. Of the six projects, 248 households received relocation benefits, and of these households:

- 44% relocated somewhere within Mountain View.
- 41% relocated somewhere within the Bay Area (outside Mountain View).
- 3% relocated somewhere within California (outside the Bay Area).
- 10% relocated somewhere in the country.
- 1% moved out of the country.

Community Engagement Process and Input

In January 2023, the City initiated a robust community engagement process to receive community and stakeholder input regarding the overall Strategy. The efforts included multiple notification methods to tenants, property owners, developers, and those who registered on the displacement response interest list. Additionally, staff held seven community/stakeholder meetings, including two for tenants (one held virtually and the other held in person), and one-on-one meetings with the incorporation of interpretation/translation services. Approximately 50 to 60 persons attended the in-person tenant stakeholder meeting, which included child-care and interpretation services.

Attachment 4 provides a summary of the input received during this process, which was presented at the seventh and final community/stakeholder meeting held on February 21, 2023. In the tenant stakeholder meetings, participants provided a broad range of input, including that the City should develop a local version of SB 330 when the bill sunsets. The other stakeholder groups did not provide specific comments on local replacement requirements and instead focused on other components of the Strategy. In general, market-rate developers felt that increasing housing

supply was the primary way to address tenant displacement but that the overall cost, requirements, and length of the development process hinders that goal. Property owners provided similar input and also expressed that they feel they are being saddled with the burden of solving tenant displacement. Nonprofit developers noted they are naturally mission-aligned with preventing tenant displacement and are open to exploring options but that the details do matter in terms of the feasibility of programs or their ability to implement certain requirements.

DISCUSSION

This section provides the following:

- Explanation of SB 330 and how the City is implementing the State replacement requirements.
- Review of other relevant State laws (including Costa-Hawkins, the Ellis Act, AB 1505, and Housing Element law) and their impact on the City’s ability to implement local replacement requirements.
- Relationship of the R3 Zoning Update work plan item to local replacement requirements.
- Recommendation for timing of adoption of local replacement requirements.
- Options and recommendations for a framework for local replacement requirements.

State Senate Bill 330 Replacement Requirements

In 2020, the Housing Crisis Act of 2019, also known as SB 330, went into effect and was initially scheduled to sunset in 2025. Subsequent State law extended the sunset date to 2030. Among various housing requirements, SB 330 includes replacement requirements for new residential projects that demolish protected housing units, including the following requirements:

- **No net loss of total units**: Requirement to replace demolished units with a project that will “include at least as many residential dwelling units as the greatest number of residential dwelling units that existed on the project site within the last five years.”
- **No net loss of “protected units”**: The new project must replace all demolished “protected units” with affordable units and/or new CSFRA units. In addition, lower-income occupants of protected units must receive relocation benefits and be offered a right to return to the redeveloped property at an affordable rent or sales price. As defined by SB 330, “protected units” include the following:
 - Any unit that had a low-income deed restriction for any of the previous five years.

- Any unit that was subject to the CSFRA for any of the previous five years.
- Any unit that was rented by a tenant who was low-income for any of the previous five years.
- Any unit that was removed from the market per the Ellis Act in the previous 10 years.
- Rent levels of the replacement units: On September 13, 2022, Council held a New Business item to discuss replacement requirements for projects subject to SB 330 replacement requirements.

SB 330 provides the City with the option to set affordability of replacement units if the demolished units were CSFRA units previously occupied by moderate- or above moderate-income households. The two options are: (1) require the protected units be replaced with deed-restricted units affordable to households at 80% area median income (AMI); or (2) require the protected units be replaced as new CSFRA units (the rents would initially be set at market-rate rents, and the allowable annual rent increase would be limited going forward per the CSFRA).

At its September 2022 meeting, Council selected Option 1 (See Table 3 below) because original units being replaced would be older units and rent-stabilized units and, therefore, likely rented at a monthly rate below market-rate 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 at affordable levels to households at 80% AMI, they would remain affordable, resulting in no net loss of affordable units. Additionally, Option 2 would mean that a new development would have both deed-restricted units and new CSFRA units, which would be more administratively difficult to track, monitor, and enforce the project requirements.

Table 3: City Implementation of SB 330 Replacement Requirements for Protected Units

	Protected Units and HH Income of Previous Tenants 80% AMI or Less	Protected Units and HH Income of Previous Tenants Unknown	Protected Units and HH Income of Previous Tenants >80% AMI
Replacement Requirements	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.	Protected units to be replaced with deed-restricted units at 80% AMI.

SB 330 Replacement Requirements (and, Therefore, Feasibility) Can Range Widely by Project

Because the rents for the replacement units will vary based on Table 3, each demolition project will have different AMI requirements based on the household incomes of the existing residents and the number of vacant units. However, property owners have stated they generally do not keep current household incomes of their tenants, and they are currently not required to submit this information as part of the CSFRA program. As such, a developer would typically not know the actual replacement requirements for and the feasibility of an SB 330 project until they submit a formal planning application to the City. At that time, the developer is required to gather (via the City’s tenant relocation consultant) the household income information so that replacement requirements can be determined.

Therefore, the feasibility of an SB 330 redevelopment project can vary widely from property to property. Table 4 below explains how these requirements can differ based on the existing situation, using an illustrative example comparing two properties of the same size in the same zoning district.

Table 4: Example of Different SB 330 Replacement Requirements Based on Tenant Incomes

	Site Size	Max Allowable Density	# of CSFRA Units	Existing Tenant Incomes	Replacement Units	Weighted Average of Replacement Units
Property A	1 acre	35 units	20 units	12 @ 30% AMI 2 @ 50% AMI 6 vacant units	12 @ 30% AMI 2 @ 50% AMI 6 @ 80% AMI	47% AMI (less feasible)
Property B	1 acre	35 units	20 units	2 @ 30% AMI 2 @ 50% AMI 4 @ 80% AMI 10 @ 120% AMI 2 vacant units	2 @ 30% AMI 2 @ 50% AMI 4 @ 80% AMI 10 @ 80% AMI 2 @ 80% AMI	72% AMI (more feasible)

For example, all else being equal, Property A is less feasible than Property B because it has a higher number of extremely low-income tenants and, therefore, more replacement units at 30% AMI. Property B is more feasible because it has a higher number of replacement units at 80% AMI due to the number of low- and moderate-income tenants as well as vacant units.

Under SB 330, Local Replacement Requirements Must Account for Project Feasibility

If a city wishes to establish local replacement requirements while SB 330 is in effect, SB 330 stipulates that cities cannot implement policies or programs that would “reduce a site’s residential development capacity” compared to the level of development permitted under development standards as they existed in 2018 (pre-SB 330). This means that cities cannot set requirements, such as local replacement requirements, so high as to make development economically infeasible because that would have the effect of reducing residential development capacity.

However, local replacement requirements are not needed as a practical matter while SB 330 is in effect because the State replacement requirements are already highly protective. In researching other jurisdictions, staff is not aware of any other cities implementing local replacement requirements while SB 330 is in effect. Furthermore, SB 330 replacement requirements do not need to consider the economic feasibility of its own requirements because it is a State law.

Rationale for Post-SB 330 Local Replacement Requirements

SB 330 has addressed many of Council’s goals for the time being. However, absent other replacement requirements, State, local, or otherwise, that would go into effect when SB 330 sunsets, it is anticipated that redevelopment projects may resume, particularly as older apartment buildings like CSFRA properties continue to age.

Density bonus projects will have one-to-one replacement requirements due to State Density Bonus Law (SDBL) even after SB 330 sunsets. However, SDBL replacement requirement projects would not apply to regular projects (i.e., nondensity bonus projects). Therefore, local replacement requirements would provide protections for all projects after SB 330 sunsets.

Furthermore, the Department of Housing and Community Development (HCD) has also increased its emphasis on tenant protections, and current Housing Element law requires cities to meet their legal obligation to affirmatively further fair housing (AFFH) and in compliance with State law (AB 686). Addressing tenant displacement through various measures falls under the AFFH, and HCD specifically identifies replacement housing requirements as a tool that cities can use to respond to AFFH requirements. While AFFH is an evolving area, staff’s assessment is that HCD is likely to strengthen its stance regarding tenant protections and would, therefore, look favorably on local efforts to implement strong replacement requirements.

State Law Considerations for Post-SB 330 Local Replacement Requirements

After SB 330 sunsets (assuming no other State laws are enacted), cities must still consider the economic feasibility of local replacement requirements. Although HCD would likely support strong local replacement requirements, staff believes that HCD would also consider the requirements a governmental constraint and would require the jurisdictions to mitigate the constraint and increase development feasibility, even if that means redevelopment projects would become more viable and cause at least interim displacement. There are two sets of laws that relate to the economic feasibility of residential development with local replacement requirements:

- **Housing Element Law**: Current Housing Element law requires cities to evaluate governmental constraints and to mitigate them where possible. Historically, this focus has been on the sites inventory’s constraints and the ability to meet the City’s Regional Housing Needs Allocation (RHNA). However, based on the City’s 2023-31 Housing Element update process and assessment of how the process has occurred throughout the region and State, it is anticipated that HCD would only increase its emphasis on reducing governmental constraints in future cycles.
- **Assembly Bill 1505**: AB 1505 was enacted in 2017 to overturn the Court of Appeals decision in *Palmer/Sixth St. Properties, LP v. City of Los Angeles* (the *Palmer* decision) that limited all

cities' ability to require affordable units be constructed in new rental housing developments. Under AB 1505, the City is allowed to impose inclusionary housing requirements on newly constructed rental housing. However, if the City requires more than 15% of units in newly constructed rental housing to be affordable to lower-income households, HCD has authority to review the City's requirements. If the City fails to meet at least 75% of its RHNA for above moderate-income households, HCD can suspend implementation of the City's affordability requirements until the City prepares an economic feasibility study demonstrating that its affordability requirements do not constrain housing development. In other words, if the City adopts local replacement requirements for newly constructed rental housing projects that require more than 15% of new units to be affordable and development is not economically feasible, HCD can suspend implementation of the City's requirements. In order to achieve no net loss of CSFRA units via local replacement requirements in the future, it is likely that most if not all redevelopment projects will have more than 15% of the new units as affordable unless the project has a significant density increase beyond the density of the existing property.

Local replacement requirements must also not conflict with other relevant State laws, specifically:

- State Rent Control Laws: Local replacement requirements must comply with the State rent control laws, primarily the Costa-Hawkins Act and the Ellis Act. Costa-Hawkins is a State law established in 1995 that limits the authority cities have in implementing rent stabilization programs. One of the key limitations is that Costa-Hawkins prohibits "vacancy control," which would limit a property owner's ability to set rents to new tenants. Instead, local rent stabilization programs must allow for "vacancy decontrol," which allows a property owner to set initial rents for new tenants at any price, typically market-rate rents.

Notwithstanding the Costa-Hawkins Act's general prohibition on this practice, the Ellis Act allows the City to impose rent control or affordability restrictions on newly created rental housing when CSFRA units are withdrawn from the rental market and replaced with new rental housing within five years of withdrawal. For units that are removed from the rental market and replaced after five years but within 10 years, the Ellis Act allows the City to require owners to offer displaced tenants a right of first return at an unrestricted price. If a unit is withdrawn and not replaced for more than 10 years, no local requirements may be imposed on the units. The Ellis Act preempts local restrictions that are stricter than what the Ellis Act expressly allows, which means that the City may not impose additional affordability requirements on units that are withdrawn from the rental market and not replaced for at least five years.

The City may impose new affordability restrictions that are consistent with the Ellis Act. However, as an additional limitation on the City's power, the Ellis Act also protects property owners' right to withdraw their units from the rental market. This means that the City

cannot adopt local replacement, affordability, or any other requirements if doing so would make it infeasible for property owners to withdraw their units from the rental market or foreclose uses other than maintaining rental housing on the property.

The State’s Tenant Protection Act (AB 1482) does not include any requirement that would conflict with or preempt a local replacement requirement.

R3 Zoning District Update Is a Related But Separate Council Priority Work Plan Item

The Fiscal Year 2023-25 Council Strategic Work Plan includes the R3 Zoning District Update (R3 Update) to increase housing affordability, diversity (including more affordable ownership units and stacked-flat condos), and supply through increased development capacity and good land use/urban design policies. The R3 zoning update will focus on the following items as directed by Council:

- Revise development standards for all unit types, including the Rowhouse Guidelines, to incentivize more affordable unit types, such as stacked flats, and a range of unit sizes.
- Create better neighborhood-focused design through a form-based code approach.
- Improve walkability through pedestrian-oriented design and improved landscaping and streetscape standards.

While the R3 Update and local replacement requirements are distinct and separate work plan items, the R3 Update is discussed here because nearly all CSFRA units are in the R3 Zoning District. Therefore, the projects naturally overlap in terms of both geography and policy impacts: a City requirement to replace demolished CSFRA units would preserve the affordable housing supply but make redevelopment projects on R3 less economically feasible, while increasing allowable densities in the R3 Zoning District would make redevelopment more feasible and may create situations where tenants would have to vacate their current units either temporarily or permanently.

The R3 Update, however, is not the solution to address the feasibility considerations regarding post-SB 330 local replacement requirements for the following reasons:

- The Housing Element includes a program to evaluate and reduce constraining standards (such as open area and setbacks) in the R3 Zoning District. However, the City is not required to increase R3 densities, which would be necessary to make replacement requirements economically feasible.

- The City does not need to resolve for economic feasibility of replacement units while SB 330 is in effect, and it may be more appropriate to wait before enacting local replacement requirements as discussed in Council Questions below.
- Given the highly situational nature of replacement requirements as illustrated earlier in this memorandum, a one-size-fits-all approach to density will not work to balance economic feasibility with reasonable density standards.
- State policies may evolve to prioritize the preservation of CSFRA units to provide housing stability for tenants rather than promoting opportunities for more intense development. If that were to occur, increasing density to support economic feasibility may make redevelopment more attractive and act counter to that preference.
- Other future policy changes from the State may impact how economic feasibility is evaluated. Additionally, reducing allowed densities once established may become more difficult given trends in State laws and oversight. Accordingly, near-term density decisions in the R3 update project to address economic feasibility are not timely; decisions about feasibility should be made prior to local replacement requirements taking effect.

As a result, staff believes that the R3 project should focus on the Council goals for that project and related Housing Element programmatic requirements. Economic feasibility issues related to local replacement requirements are best addressed closer to when any such local replacement requirements would take effect (no sooner than 2028, as discussed below).

Therefore, staff recommends that the R3 Update project move forward separately from local replacement requirements.

Council Questions

Policy Question 1—Timing and Framework Approach

As mentioned in the Background section, Council directed staff to evaluate post-SB 330 local replacement requirement options (September 2020 Study Session) and to hold a Study Session in 2023 to review options for a local ordinance regarding the percentage of the units that need to be replaced, the income levels that the units will be replaced at, etc.

The Discussion section above explained that local replacement requirements are not needed at this time because the State's SB 330 replacement requirements are already highly protective. Additionally, while SB 330 replacement requirements are in place, feasibility does not need to be addressed because they are State requirements. Local replacement requirements and feasibility options will be required when SB 330 sunsets and the State protections go away, even if cities simply decide to adopt local replacement requirements modeled after SB 330. However, it is

very difficult to develop feasibility options now for 2030 because much can change economically and legally in seven years. **Finally, neither staff nor the City’s consultants who have assisted with the displacement response strategy are aware of another jurisdiction developing local replacement requirements at this time that would go into effect while SB 330 is in effect or in preparation for when SB 330 sunsets. Therefore, there are no benchmark examples or best practices at the local level to draw from.**

For these reasons, staff recommends that the City continue to implement SB 330 replacement requirements rather than adopting a local ordinance now. Staff recommends resuming development of a local ordinance along with feasibility options as the SB 330 sunset date approaches, but no sooner than 2028. By 2028, it is expected that the R3 Update will have been completed and implemented for a few years, and feasibility options can be developed with timely economic information and in consideration of any new laws or HCD guidance.

If Council still wishes to develop local replacement requirements now, staff recommends adopting a framework rather than an ordinance. A framework will allow Council to still set direction while providing greater flexibility than an ordinance. Having flexibility is important because much can change in seven years. If Council supports a framework approach, staff recommends that a resolution with the proposed framework be brought to Council in 2024 for adoption. Options for a replacement framework is provided in Policy Question 2 below.

Question 1: Does Council agree with staff’s recommendation to: (a) develop a framework for post-SB 330 local replacement requirements instead of a local ordinance at this time; (b) bring back a resolution for Council to adopt a framework in 2024; and (c) develop a local ordinance prior to the SB 330 sunset date but no sooner than 2028, or does Council have any other feedback?

Policy Question 2—Local Replacement Requirements Framework Options

If Council agrees with staff’s recommendation in Question 1 above, staff recommends that the framework be based on SB 330 replacement requirements. Each of the three framework options below in Table 5 are based on SB 330 replacement requirements, which provide important protections in demolition projects, including: no net loss of total units, no net loss of protected units, and requiring that the rents/AMI levels of the replacement units be based on the incomes of the existing tenants. These requirements ensure that the existing housing supply is protected and that existing tenants can afford the cost of the new replacement housing. The City’s local replacement requirements are intended to focus only on CSFRA units since those are the only units that have been subject to demolition over the past decade and are likely to continue to be the units subject to future redevelopment projects.

Table 5: Local Replacement Requirements Framework Options

CSFRA Units to Be Replaced	Framework Option 1 (Recommended)		Framework Option 2		Framework Option 3 (Not Recommended)	
	Rental	Ownership	Rental	Ownership	Rental	Ownership
Occupied by Lower-Income Households	New units at income levels of previous tenants residing in property.		Same as Option 1.		Same as Option 1.	
Vacant or Occupied by Moderate- and Above Moderate-Income Households	New <u>moderate-income</u> units (affordable rents between 80%-120% AMI).	New <u>moderate-income and higher</u> units (affordable sales prices between 80%-150% AMI).	New <u>low-income</u> units (rents between 50%-80% AMI).	Same as Option 1.	New <u>CSFRA units starting at market-rate rents.</u>	Same as Option 1.
Considerations	<ul style="list-style-type: none"> Provides SB 330 protections to housing supply and existing tenants; makes first of return most possible; can also create middle-income units in rental and ownership redevelopment projects. 		<ul style="list-style-type: none"> More restrictive for new rental projects. Provides more deeply affordable units but makes projects less feasible and no opportunity for middle-income rental units. 		<ul style="list-style-type: none"> Less restrictive for new rental projects, which provides less-affordable rental units but makes projects more feasible. More complicated to monitor/enforce due to a project having two types of units and requirements (deed-restricted affordable units versus CSFRA units) as well as incentivizing fair housing violations. 	

Staff recommends Option 1. This option includes SB 330 protections for the occupied units by basing the replacement requirements on the incomes of the existing tenants. However, Option 1 differs from SB 330 by requiring moderate-income units for the new units that replace vacant units or units that were occupied by moderate- or above moderate-income tenants. If the new housing is an ownership project, staff recommends allowing the middle-income units to go up to 150% AMI. These higher income levels address Council’s interest in more middle-income housing for both rental and ownership projects, are based on the moderate-income levels in the City’s BMR Affordable Housing Program, and can help with project feasibility.

Option 2 mirrors Option 1 for the occupied units. Option 2 differs from Option 1 by requiring deeper affordability levels for new rental units that replace vacant units or units that were occupied by moderate- or above moderate-income tenants. Of the three options, Option 2 is the

most similar to the City's current implementation of SB 330, in which all CSFRA units are replaced at lower-income levels for new rental units. Option 2 has the greatest impact on economic feasibility, which may be more difficult for the City to address in the future. Finally, it sets the highest bar for local replacement requirements, which may be more difficult to roll back later.

Option 3 (not recommended) also mirrors Option 1 for the occupied units. Option 3 differs from Option 1 by allowing the new rental units that replace vacant units or units that were occupied by moderate- or above moderate-income tenants to be set at market-rate rents and subject to the CSFRA thereafter. This allows Option 3 to provide the greatest project feasibility, but it also reduces the number of affordable units with deeper affordability levels in the replacement project, removes the ability to create middle-income housing, and is the most administratively complex to monitor and enforce because the replacement project would have two different types of housing (new deed-restricted units versus new CSFRA units). Finally, Option 3 would create the most incentive for property owners to (illegally) evict tenants in order to have more vacant units or to induce them to stop renting to lower-income households, which would violate fair housing laws. Therefore, Option 3 would likely require the most monitoring and enforcement resources of the three options.

There is another option that is not recommended for consideration because it would not meet the goal of protecting tenants from displacement. This option is to have predetermined AMI levels apply to all redevelopment projects and units, regardless of the income levels of the existing tenants or the vacancy of the units. For example, they could be similar to the City's BMR requirements for projects. Predetermined AMI levels would reduce uncertainty for property owners and developers, but it would not be an effective way to ensure that existing tenants have replacement units they can afford and return to. Without matching the rents and AMI levels of the replacement units to the incomes of the existing tenants, there will be a much greater likelihood that the existing tenants will be permanently displaced.

Question 2: Does Council agree with staff's recommendation for Framework Option 1 (as shown in Table 5) or have any other feedback?

RECOMMENDATION

Receive Council input on the timing and approach for implementing local replacement requirements as part of the City's Displacement Response Strategy.

The two questions are:

- Question 1: Does Council agree with staff's recommendation to:
 - a. Develop a framework for post-SB 330 local replacement requirements instead of a local ordinance at this time;

- b. Bring back a resolution for Council to adopt a framework in 2024; and
 - c. Develop a local ordinance prior to the SB 330 sunset date but no sooner than 2028, or does Council have any other feedback?
- Question 2: Does Council agree with staff’s recommendation for Framework Option 1 (as shown in Table 5) or have any other feedback?

NEXT STEPS

Staff will implement next steps based on Council’s responses to the questions above.

PUBLIC NOTICING

Agenda posting. Email notification sent to CSFRA tenants and property owners, mobile home park owners and residents, and the displacement response interest list.

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- Attachments:
1. October 2019 Study Session—Displacement Response
 2. September 2020 Study Session—Displacement Response
 3. August 2022 Study Session—Affordable Housing Strategic Plan
 4. Summary of Community/Stakeholder Outreach Meetings Held in 2023