



Rent Stabilization Board

DATE: November 18, 2021

TO: Honorable Members of the Berkeley Rent Stabilization Board

FROM: Lief Bursell, Senior Planner
Be Tran, Associate Planner

SUBJECT: Residential Demolition Projects Update

Recommendation:

That the Board review the attached list of residential demolition projects and provide direction on information they would like included in future reports on this subject.

Background

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 marked 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 is effective January 1, 2020 through January 1, 2025. However, Governor Gavin Newsom signed SB 8 into law which extended SB 330 until 2030.

Under SB 330, any existing unit that is classified as a “protected unit” must be replaced after demolition. This includes 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.” Berkeley’s Planning Department informed Rent Board staff that the City Attorney’s Office has determined that a rent-controlled unit qualifies as a "protected unit" under SB 330, even if it's been vacant or not available for rent for over five years. SB 330 also gives local jurisdictions with rent control regulations the option to elect for replacement units that are subject to an affordability restriction for 55 years or to the local rent control ordinance¹ for the life of the project.

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.

Demolition Ordinance Revisions

On November 18, 2020, the Planning Department presented revisions to the Demolition Ordinance to the Planning Commission that proposed significant amendments that seek to comply with SB 330 and recent court cases involving demolition projects. SB 330 supersedes several of the requirements in the current Demolition Ordinance, including the option to pay a replacement unit mitigation fee and to allow conversions of rent-controlled residential units that do not provide replacement units.

Both the Planning Commission and the 4x4 Committee have asked Planning staff to address several concerns with these revisions, and Planning staff plan to present a revised proposal early in calendar year 2022.

Rent Board 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

¹ The Rent Stabilization Ordinance currently exempts rent regulation newly constructed residential units with a new certificate of occupancy issued after June of 1980, and the Ordinance would require a voter approved amendment to allow the City of Berkeley to allow for rent-controlled replacement units.

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.

Current Demolition Projects

The attached spreadsheet contains some basic information on recently received residential demolition applications, including the number of residential units involved, the number of existing tenants, and the current status of the project. Staff can provide regular updates to this report when new applications are submitted or when there are developments on the current applications.

Name and Telephone Number of Contact Person:

Lief Bursell, Senior Planner (510) 981-7368

Residential Demolition Project List 11-18-2021

Project Address	Project Description	Application Date	# Existing Permitted Residential Units	# Tenant Occupied Units	# Replacement Units	Application Status
2435 Haste Street	Demolish an existing two-story apartment building comprising eight protected two-bedroom rental units and construct an eight-story apartment building with 37 units.	10/18/2021	8	16	16 BMR	Application is currently under review by Planning.
2138 Center Street (aka 2128 Oxford)	Demolish two existing buildings (one commercial and one mixed-use containing 16 rent-controlled units) and merge the two lots to construct a 17 story mixed-used building with 283 dwelling units and 10,164 sf of commercial space.	9/2/2021	16	0	16 BMR	Application deemed incomplete on 10/01/2021.
1725 Berkeley Way	Demolish an existing 1,874 square-foot, one-story duplex and accessory structure and to construct a new 4,092 square-foot, three-story duplex.	4/8/2021	2	1	2	Continued off calendar on 8/26/2021 ZAB meeting. Last minute comments from neighbors raised question on the rental history of the duplex and staff deemed SB 330 applied.
1709 Shattuck Avenue	The applicant initially proposed the elimination of 57 dwelling units by converting them to Group Living Accommodations (GLAs). RB staff expressed concern with how the project will provide equivalent replacement units since a GLA is not equivalent to a two-bedroom dwelling unit. Applicant later modified the scope to relocate an existing dwelling unit on the ground floor to the top floor, creating a new dwelling unit on the top floor, and adding gross floor area on the ground floor within the parking area.	3/30/2021	85	85	1	Application deemed incomplete on 9/29/2021.
2015 Blake Street	Relocate two victorian residential buildings at 2012 Dwight (4 units) and 2020 Dwight (3 units) and demolish a 2001 Blake Street to make room for a development with 161 new units	6/25/2020	9	5	9 BMR	Pre-application review. Note: 2001 Blake is legal duplex, but used as office - never registered with RSB
1915 Berryman Street	Demolish existing three-unit residential building and construct a four-story residential building with 11 dwelling units.	5/26/2020	3	0	3 BMR	Approved by ZAB on 10/28/2021.

Residential Demolition Project Update

Berkeley Rent Stabilization Board
November 18, 2021

Demolition Ordinance Purpose

1

Maintain and
increase available
affordable housing

2

Protect existing
tenants

3

Allow for new
projects to increase
housing supply

Demolition Ordinance Revised in 2016

Replacement Unit/In-lieu fee
option

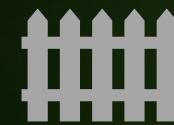
Prohibitions after Ellis/illegal
eviction/tenant harassment

Stronger Tenant Relocation
requirements

SB 330 Housing Crisis Act



Effective Jan 1, 2020
(through 2030)



Rent Controlled Unit =
Protected Unit



Protected Units require
one to one replacement
(BMR or rent control)



Tenant income levels
impact type/affordability
of replacement units

Demolition Ordinance Revisions

- SB 330 preempts several requirements
- Court decisions impact Ellis Act prohibition on demolitions
- Planning Department to present revisions to 4x4 Q1 2022

Rent Board Staff Application Review

Provide Property history under rent control

Identify Ellis Act evictions,
harassment, or illegal eviction

Propose conditions to mitigate projects impact to existing tenants

Current Residential Demolition Projects

Six projects since 2020



Project Update Includes

Project Descriptions	Number of Units (existing & Proposed)	Application Status
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Staff request input from the Board on what information you would like to see in future reports

Questions and Feedback

