

RESOLUTION NO. 2024- ____

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF
LOS GATOS ADOPTING A REPLACEMENT UNITS
GUIDELINES PURSUANT TO CALIFORNIA STATE LAW**

WHEREAS, on July 10, 2024, the California Department of Housing and Community Development (“HCD”) certified the 2023-2031 Housing Element of the Town of Los Gatos (“Town”); and

WHEREAS, the Housing Element includes Implementation Program AU, which requires the Town to adopt a policy requiring replacement housing units when new development occurs on a site in the sites inventory which currently has, or within the last five years, has had, residential uses that were legally restricted to low-income households, subject to price control, or occupied by low-income households; and

WHEREAS, replacement housing requirements are established by State Density Bonus Law [Government Code Section 65915(c)(3)]; Housing Element Law [Government Code Section 65583.2(g)(3)], and the Housing Crisis Act of 2019 (Government Code Sections 66300.5 – 66300.6), collectively State Replacement Housing Requirements; and

WHEREAS, the Town desires to implement the replacement housing requirements of state law; and

WHEREAS, on _____, the Town Council adopted Ordinance No. _____, authorizing the adoption of Guidelines to implement State Replacement Housing Requirements, and desires to adopt such Guidelines; and

WHEREAS, a public hearing was duly and properly noticed for the Town Council meeting of _____.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Los Gatos that the Guidelines on State Replacement Housing Requirements, which are attached hereto as **Exhibit A** and hereby incorporated herein, are adopted and shall be used to implement the replacement housing requirements contained in the Housing Crisis Act of 2019 (Government Code Sections 66300.5 and 66300.6), State Density Bonus Law [Government Code Section 65915(c)(3)] and Housing Element Law [Government Code Section 65583.2(g)(3)] and to implement Housing Element Program AU; and

BE IT FURTHER RESOLVED, In the event of any inconsistency between any applicable state law replacement housing requirements and the Guidelines, state law shall control; and

BE IT FURTHER RESOLVED, that the Community Development Director or designee is hereby authorized to amend the Guidelines as required to implement changes in state law; and

BE IT FURTHER RESOLVED, that this Resolution shall be effective immediately upon its adoption.

PASSED AND ADOPTED at a meeting of the Town Council of the Town of Los Gatos, California, held on _____ day of _____ 2024, by the following vote:

TOWN COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

Town of Los Gatos

Guidelines on State Replacement Housing Requirements

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I. Introduction

The Legislature has adopted three state laws – the Density Bonus Law, Housing Element Law, and the Housing Crisis Act of 2019 -- to ensure that new housing developments do not *reduce* the total number of existing dwellings and do not reduce the number of dwellings housing lower income persons. In most communities, a housing project must create at least as many housing units as will be demolished. Projects must also replace units rented by lower income households with units affordable to lower income tenants and, in most communities, must provide relocation and other benefits to lower income tenants who are displaced by the new construction.

Replacement housing requirements have applied to projects requesting a density bonus since 2015, and those requirements also apply to any site listed in a jurisdiction's sixth cycle Housing Element. The Housing Crisis Act of 2019 and amendments effective January 1, 2022 and January 1, 2024 expanded that requirement to any housing development containing one or more units that proposed to demolish any existing units and most nonresidential developments.

The purpose of the replacement requirements is to prevent the loss of housing units and the displacement of lower income households. State law does not allow local agencies to approve housing unless the proposed development complies with the applicable replacement housing requirements described below.

II. State Density Bonus Law

A. When do replacement housing requirements apply under Density Bonus Law?

State Density Bonus Law (Government Code Sections 65915 - 65918) is a mechanism by which housing developers may receive more favorable development requirements from local governments in exchange for a commitment to build or donate land for affordable housing or senior housing units. Density bonus is a state mandate, meaning any developer who meets the requirements of State Density Bonus Law is entitled to receive the density bonus and other benefits (including incentives, waivers and reductions of parking standards).

Where a density bonus project proposes to demolish existing housing, or where rental housing existed on the site in the past five years, the applicant must comply with the replacement housing requirements in State Density Bonus Law. (Government Code Section 65915(c)(3). A project is ineligible for a density bonus or "any other incentives or concessions" under State Density Bonus Law unless the applicant conforms with the replacement housing requirements. These replacement housing requirements apply to any project requesting a density bonus regardless of the applicability of the Housing Crisis Act of 2019 (Government Code Sections 66300.5-66300.6).

Replacement housing requirements under State Density Bonus Law do not apply to density bonus projects that propose to develop projects where 100 percent of the units are affordable to lower income households (although these projects are subject to certain provisions of the Housing Crisis Act of 2019). They also do not apply to any density bonus applications that were submitted to or processed prior to January 1, 2015.

B. What types of units must be replaced?

State Density Bonus Law requires the replacement of certain units that either now exist or that existed on the site in the last five (5) years preceding submission of the development application.

These units are those that are, or have been at any time during the last five (5) years preceding submission of the development application:

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; or
2. Subject to some form of rent or price control through a public entity's valid exercise of its police power; or
3. Occupied by lower or very low-income households.

These units are collectively referred to as "Density Bonus Protected Units" throughout these guidelines.

C. How does a jurisdiction determine whether a unit must be replaced?

As required by State Density Bonus Law, Los Gatos requests the following information from applicants to determine compliance with replacement housing requirements. Below is a list of the information that Los Gatos requires from density bonus applicant:

1. **Restricted Affordable Lower Income Units:** Indicate the number of units by bedroom size existing on the site in the past five years that were at any time subject to a recorded covenant, ordinance, or law that restricted rents or prices to be affordable to lower or very low-income households.
2. **Units Subject to Rent Control or Price Control:** Indicate the number of units by bedroom size on the site that in the past five years have been subject to rent control (through either state law, a local rent control ordinance, or an inclusionary (BMR) ordinance) or price control (through an inclusionary (BMR) ordinance).
3. **Incomes of Existing Tenant Households:** Provide documentation of the names, property address, and current incomes of any households now occupying units on the site, by bedroom size of units. If current incomes are unknown, please indicate.
4. **If Any Units Are Still Occupied, Incomes of Households Formerly Occupying Vacant Units:** For any vacant units, provide documentation of the income of the last household occupying the unit, by bedroom size. If that household's income is unknown, please indicate.
5. **No Units Occupied; All Units Vacant or Demolished; Incomes of Former Tenants:** If *all* units that existed on the site in the last five years are currently vacant or have been demolished, please indicate the maximum number of units, by bedroom size, that existed on the site in the past five years and the income of each household occupying a unit at the time when the maximum number of units existed on the site. If the income of those households is unknown, please indicate.
6. **Number of Units to be Demolished.** If any dwelling units exist on the site, indicate how many units will be demolished by the project.

D. What are the requirements for the replacement units?

If the project proposes to demolish one (1) or more Density Bonus Protected Units, they must be "replaced" in accordance with the requirements below:

1. **Occupied; Incomes Known:** If the Density Bonus Protected Units are occupied at the time of submission of the density bonus application and the incomes of the households occupying the Density Bonus Protected Units are known, the proposed housing development must provide at least the same number of units of equivalent size to be made available at affordable rent or affordable housing cost to and occupied by persons and families in the same or lower income category as those households in occupancy.
2. **Occupied; Incomes Unknown:** If the Density Bonus Protected Units are occupied at the time of submission of the density bonus application but the incomes of the households occupying the Density Bonus Protected Units are not known, very low and lower income tenants are (rebuttably) presumed to occupy the units in the same proportion as shown for renter households in the Department of Housing and Urban Development's (HUD) [Comprehensive Housing Affordability Strategy \(CHAS\) database](#). The proposed housing development must provide units at affordable rent or affordable housing cost to be occupied by persons and families of very low and lower income in the same proportion as indicated by the CHAS data. All fractions must be rounded up. (Government Code Section 65915(c)(3)(B)(i).

A developer may elect to replace a low-income unit with a very low-income unit. Also, the affordable replacement units shall be counted towards the affordable units provided for purposes of calculating inclusionary requirements and the density bonus as set forth in Town Code Sections 29.10.405. et seq.

EXAMPLE: A project proposes to demolish 20 existing units. The incomes of 10 tenant households are known. Five units are occupied by very low-income households and five units by higher income households. For the 10 units where the household incomes are unknown, the CHAS data shows that 25 percent of the renter households in the city are very low-income, and 10 percent are low income. Ten percent of 10 units = 1 low-income unit; 25 percent of 10 units = 2.5 very low-income units, which must be rounded up to 3 units. Therefore, the new project must include at least 8 very low-income units (5 known very low-income households and 3 assumed) and 1 low-income unit as replacement units. The developer could elect to add another very low-income unit in place of the low-income unit.

Table 1: Calculating Replacement Units with CHAS Data

CHAS Percentage	Calculation for Unknown Incomes	Replacement Units by Income
Very low-income = 25%	10 units x 25% = 2.5	3 units
Low-income = 10%	10 units x 10% = 1	1 units

3. **Demolished and/or Vacated; Incomes Known:** For Density Bonus Protected Units that were demolished or vacated in the last five (5) years and the incomes of the last households in occupancy are known, the proposed housing development must provide at least the same number of units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as the last household(s) in occupancy.
4. **Demolished and/or Vacated; Incomes Unknown:** For Density Bonus Protected Units that were demolished or vacated in the last five (5) years and the incomes of the last households in occupancy are not known, lower income tenants are presumed to have occupied the units in the same proportion as lower income households rent units in the jurisdiction as shown in the HUD's CHAS database. The proposed housing development must provide units at affordable rent or affordable housing cost to, and occupied by, persons and families of lower income in the same proportion as indicated by the CHAS data. All fractions must be rounded up.

Equivalent Size. Regardless of which of the above-mentioned categories the units fall into, the development must provide at least the same number of units of "equivalent size" as the units replaced to be offered at an affordable rent or affordable housing cost. "Equivalent size" means that the replacement units contain at least the same total number of bedrooms as the units being replaced.

Example: One three-bedroom unit could be replaced by three one-bedroom units, or one two-bedroom unit and one one-bedroom unit. However, three one-bedroom units could **not** be replaced with one three-bedroom unit, because the *number* of units must at least equal the number of units that need to be replaced.

Example: In the scenario where a three-bedroom unit is replaced by three one-bedroom units, for instance, all three of the one-bedroom units would need to be offered at the appropriate levels of affordability.

Replacement Unit Type. The units may be of any type (apartments, accessory dwelling units, townhomes, condominiums, duplexes, etc.) and may be for-sale or for rent.

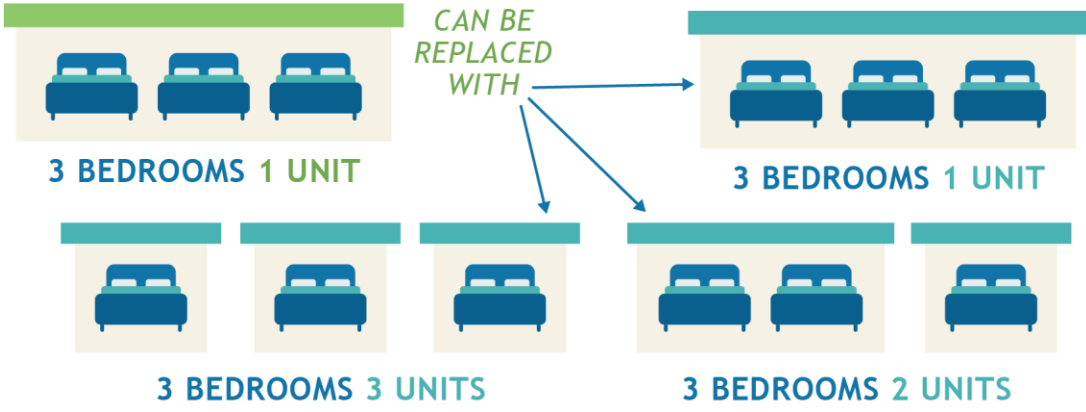
Deed Restrictions Recorded. The affordable replacement units shall be subject to a recorded affordability restriction and the Town's Below Market Price Program as set forth in Town Code Sections 29.10.3000 and following. Deed restrictions must be recorded restricting affordable replacement units, in accordance with the following:

- a. **Rental Replacement Units.** Rental replacement units must be subject to a deed restriction limiting occupancy to lower income households at affordable rents for 55 years. Affordable rent must be calculated as required by Health & Safety Code Section 50053.
- b. **For-Sale Replacement Units.** For-sale replacement units must be sold to lower income buyers at an affordable cost and be subject to an equity-sharing agreement requiring that any profits at sale be shared with the local agency, unless the local ordinance requires long-term affordability. Affordable housing cost must be calculated as required by Health & Safety Code Section 50052.5.



ALLOWED: NUMBER OF UNITS STAYS THE SAME OR INCREASES

EXAMPLES



NOT ALLOWED: UNITS DECREASE

EXAMPLE



Figure 1: Examples for Unit Replacement

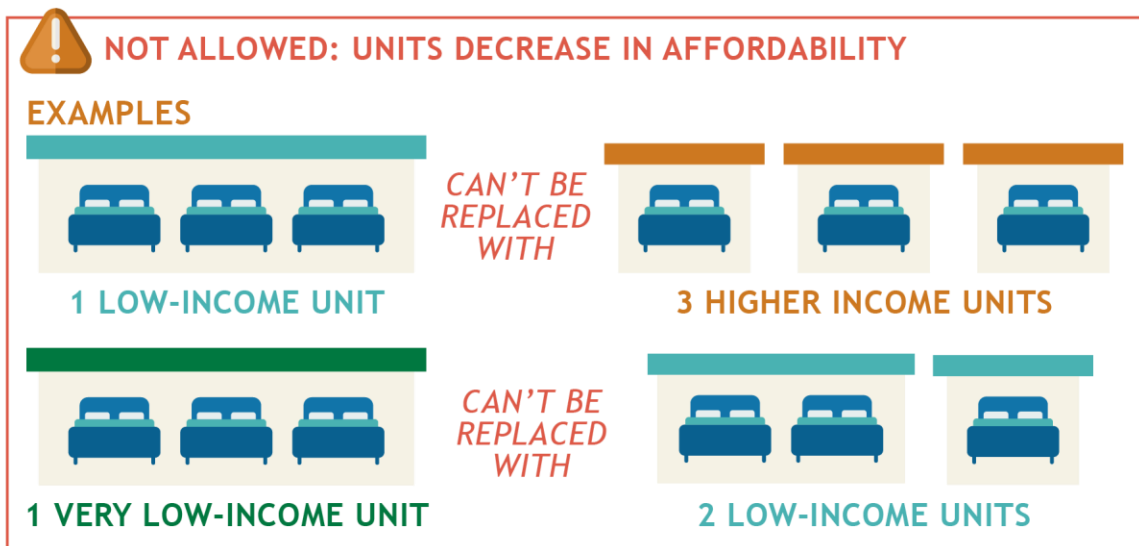
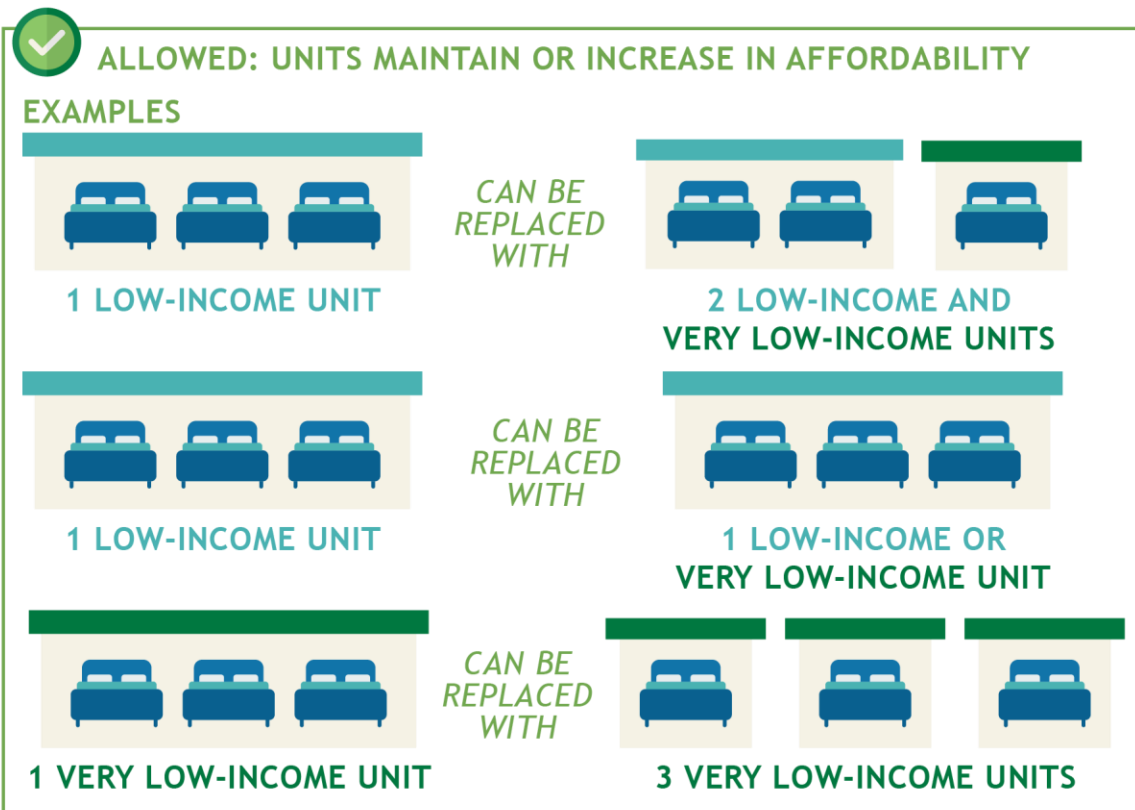


Figure 2: Examples for Affordability Replacement

III. Housing Element Law

A. What is the relevance of Housing Element law to replacement housing?

Each jurisdiction's housing element must include an inventory of land suitable and available for residential development to meet the jurisdiction's regional housing need allocation (RHNA) by income level. Sites are suitable for residential development if they are zoned appropriately and available for residential use during the planning period. All of these sites, at all income levels, must be included in the housing element and on a site inventory form prescribed by the Department of Housing and Community Development (HCD).

Some of these sites may include existing housing or may have contained rental housing in the past five years. If a project is proposed on one of these sites, the project is subject to the replacement housing requirements contained in State Density Bonus Law.

B. What are the replacement housing requirements for sites identified in a jurisdiction's Housing Element Sites Inventory?

Pursuant to Housing Element Law (Government Code Section 65583.2(g)(3)), Los Gatos requires replacement of Density Bonus Protected Units consistent with the requirements set forth in State Density Bonus Law [Government Code Section 65915(c)(3)]. These replacement housing requirements apply to **all** sites listed in the housing element, at **all** income levels – not just sites designated for lower income housing – and apply regardless of the applicability of the Housing Crisis Act of 2019.

Whenever a housing project is proposed on a site listed in Housing Element, Los Gatos must determine if it contains existing rental housing or contained rental housing in the past five years. If so, Los Gatos may need to require replacement housing. Whenever a project is proposed on a site listed in the Housing Element, the applicant is required to provide the same information as described in Section II.C above. The replacement requirements are explained in detail in Section II of this Guide.

IV. Housing Crisis Act of 2019 (SB 330)

The Housing Crisis Act of 2019 (SB 330) expanded and amended several existing State statutes, including the Permit Streamlining Act and Housing Accountability Act, with the goal of increasing production of new housing units, protecting existing housing units, and providing for an expedited review and approval process for housing development projects. Senate Bill 8 ("SB 8"), which was passed during the 2021 legislative session, made some key amendments to the Housing Crisis Act of 2019, including extending the provisions of SB 330 until January 1, 2030. Most recently, Assembly Bill 1218 ("AB 1218"), which was passed during the 2023 legislative session and went into effect on January 1, 2024, expanded the replacement housing requirements of the Housing Crisis Act of 2019 to nonresidential development projects, as further explained below. These requirements are contained in Government Code Sections 66300.5-66300.6.

A. When do replacement housing requirements apply under SB 330?

Housing and Nonresidential Development. SB 330's replacement housing requirements, as amended by SB 8 and AB 1218, apply to both of the following:

- a housing development project containing one (1) or more dwelling units and proposing to demolish existing (vacant or occupied) units, or a site where SB 330 Protected Units (defined below) were demolished in the previous five years.
- a nonresidential development project proposing to demolish existing (vacant or occupied), or located on a site where SB 330 Protected Units were demolished in the previous five years, unless **all** of the following conditions apply:
 - the project is an industrial use;
 - the project site is entirely within a zone that does not allow residential uses;
 - the zoning applicable to the project site that does not allow residential uses was adopted prior to January 1, 2022; and
 - the protected units that are or were on the project are or were nonconforming uses.

Application Submission Date. The replacement housing requirements apply only where the housing development project submits a complete application pursuant to Government Code Section 65943 on or after January 1, 2020.

Affected Town or County. Los Gatos is an "affected town" as determined and published by HCD. Therefore, the replacement housing requirements of the Housing Crisis Act of 2019 will apply to developments in Los Gatos.

B. What types of units must be replaced?

If the project is a housing development project, then the project must create at least as many dwelling units as will be demolished. In addition, all SB 330 Protected Units must be replaced in the project, similar to the requirements to replace Density Bonus Protected Units.

For a nonresidential development project, the project must replace only the SB 330 Protected Units, and they may be located on- or off-site.

SB 330 Protected Units are very similar to Density Bonus Protected Units, except that they also include those that have been withdrawn from rent or lease in accordance with the Ellis Act (Government Code Sections 7060, et seq.) within the ten (10) years preceding the submission of the application.

The other three categories of SB 330 Protected Units are identical to those identified as Density Bonus Protected Units. These units are those that are, or have been at any time during the last five (5) years preceding submission of the development application, were:

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; or
2. Subject to some form of rent or price control through a public entity's valid exercise of its police power; or
3. Occupied by lower or very low-income households.

These units are collectively referred to as "SB 330 Protected Units" throughout these guidelines.

C. How does a jurisdiction determine whether a unit must be replaced?

For any development project, the same information should be requested as for a density bonus application, and described in Section II.C, with the following addition:

Units Withdrawn Pursuant to Ellis Act. Indicate the number of units by bedroom on the site that in the past ten years have been withdrawn from rent or lease pursuant to the Ellis Act.

D. What are the requirements for the replacement units?

The requirements for replacing SB 330 Protected Units are identical to those for replacing Density Bonus Protected Units, as described in Section II.D above, with one exception for single unit projects:

Equivalent Size. Regardless of which of the above-mentioned categories the units fall into, the replacement units must be of "equivalent size" as the units replaced. "Equivalent size" is defined as containing at least the same total number of bedrooms as the units being replaced.

Exception: Single Unit Projects. Where the housing development project consists of a single residential unit on a site with a single SB 330 Protected Unit, the SB 330 Protected Unit may be replaced with a unit of any size at any income level.

E. What are the rights of the current occupants of the SB 330 Protected Units?

Displaced residents - except unlawful occupants or occupants of a short-term rental that is rented for a period of fewer than 30 days - are entitled to relocation benefits and a right of first return under SB 330.

1. **All Displaced Residents:**
 - a. **Occupancy Until Six Months Before the Start of Construction.** All existing residents must be allowed to remain in their units until six months "before the start of construction activities." Los Gatos interprets the "start of construction activities" to mean the issuance of a permit for any type of construction on the site, including but not limited to demolition, grading, utility work, etc.
 - b. **Right to Return if Demolition Does Not Proceed.** All existing occupants that are displaced must be allowed to return at their prior rental rate if the demolition does not proceed and the property is returned to the rental market.
2. **Lower-Income Residents of SB 330 Protected Units:**
 - a. **State Relocation Benefits.** The developer must provide state relocation benefits to lower-income occupants of any protected units. These include moving expenses, relocation assistance, and payment of the difference, if any, between affordable rent and rent for a "comparable" unit for up to forty-two (42) months.

- b. **Right of First Refusal for New Unit.** The lower-income occupants of SB 330 Protected Units are also entitled to a right of first refusal for a "comparable" unit in the development at affordable rent or affordable housing cost, with the exceptions listed below. A "comparable" unit must have the same number of bedrooms, have the same number of total rooms (including both permitted and unpermitted rooms), and be the same size as the unit being vacated.
- i. **Exception #1:** This requirement does not apply where the development project consists of a single residential unit located on a site where a single SB 330 Protected Unit is being demolished.
 - ii. **Exception #2:** This requirement also does not apply to units a housing development in which 100 percent of the units, exclusive of a manager's unit or units, are reserved for lower-income household, except that a right of first refusal must be offered to any occupant of an SB 330 Protected Unit who 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 housing development.

Single-Family Comparable Unit. If one or more single-family homes that qualify as SB 330 Protected Units are being replaced in a development project that consists of two or more units, "comparable unit " means either of the following: (1) a unit containing the same number of bedrooms if the single-family home contains three or fewer bedrooms; or (2) a unit containing three bedrooms if the single-family home contains four or more bedrooms. A "comparable unit" in this instance is not required to have the same or similar square footage or the same number of total rooms.

V. Additional Questions

A. How do replacement housing requirements interact with other state laws?

Replacement Units and Density Bonus. Replacement units may qualify a project for a density bonus. For instance, if fifteen (15) very low-income replacement units are required in a 100-unit project, the project would be eligible for a fifty percent (50%) density bonus and would not need to add any more affordable units. The affordable replacement units shall be counted towards the affordable units provided for purposes of calculating density bonus as set forth in Town Code Sections 29.10.405 *et seq.*

Replacement Units and SB 9. As outlined in Section IV above, the amendments to SB 330 extended the replacement housing provisions to housing development projects that propose to demolish one dwelling unit to construct one or more dwelling units. Any SB 9 project that proposes to demolish any units, or where SB 330 Protected Units were demolished in the past five years, or that is located on a site listed in the Housing Element, will be subject to the replacement housing requirements in SB 330.

SB 330, Density Bonus Law, and AB 1482. AB 1482, or the Tenant Protection Act of 2019, imposed rent caps statewide on many rental units. Units that are subject only to the rent caps in AB 1482 are considered "protected units" for the purposes of both State Density Bonus Law and SB 330. However, they do not need to be replaced unless they are also occupied by very low or low-income households or are subject to local rent control laws.

B. How do replacement housing requirements interact with relevant local laws?

Replacement Units and Town's Inclusionary Requirement. Replacement units must be considered in determining whether the project satisfies a locally adopted inclusionary requirement. As such, the affordable replacement units shall be counted towards the affordable units provided for purposes of calculating inclusionary requirements as set forth in Town Code Sections 29.10.405 *et seq.* However, to count for both requirements, the affordable units must meet the requirements of both state law and the Town Code.

C. Do replacement housing requirements apply to illegal or unpermitted units?

Neither SB 330 nor State Density Bonus Law reference the status of the unit when defining "protected units." Rather, whether or not a unit is a "protected unit" that must be replaced is determined by the income of the tenants, any deed

restrictions, rent/price control status, and Ellis Act status. Therefore, the replacement housing obligations appear to apply even where the units to be demolished are illegal or unpermitted units.

D. Where must the replacement housing be located?

The Housing Crisis Act and State Density Bonus Law require that a housing development project must contain the replacement units, regardless of whether the number of units conforms with the zoning. For a housing development project subject to SB 330, the replacement housing units cannot be provided in a separate housing development project. For a nonresidential development project subject to SB 330, the required replacement housing may be located on a site other than the project site but must be located within the same jurisdiction. The project proponent may contract with another entity to develop the required replacement housing but must ensure that the required replacement housing is developed prior to or concurrently with the development project.

VI. Summary Checklist

The checklist below summarizes the suggested steps to take when determining the replacement housing obligations for any specific development project:

- STEP 1:** Determine whether the proposed housing development project is applying for a density bonus and/or was identified on the jurisdiction's Housing Element Sites Inventory and/or proposes to demolish existing units and/or whether units existed on the site in the last 10 years.
 - If yes, continue to Step 2.
 - If no, stop here.
- STEP 2:** As part of the application for the housing development, require information about existing and former housing on the site as described in Sections II.C and IV.C. Consider retaining a relocation consultant if occupied housing exists on the site that will be demolished.
- STEP 3:** Based on the information gathered, determine whether there are or were any "protected units" on the site within the last five (5) years preceding the submission of the application for the housing development (or within the last ten (10) years if the Ellis Act was used).
 - If yes, continue to Step 4.
 - If no, stop here.
- STEP 4:** Determine the number and affordability level of any required replacement housing units.
- STEP 5:** Determine if the replacement units are sufficient to meet any local inclusionary (BMR) ordinance requirements.
 - If the application is for a density bonus project, go to step 6.
 - If the application is for a project subject to SB 330, skip to step 7.
 - If both SB 330 and State Density Bonus Law are applicable, go to step 6 and then step 7.
- STEP 6:** Determine whether the replacement units are adequate to qualify the project for the requested density bonus, or if more affordable units are required.
- STEP 7:** Determine the relocation rights of any existing occupants of the protected units.
- STEP 8:** The affordable replacement units shall be subject to a recorded affordability restriction and appropriate conditions of approval.