

Residential Replacement Reqs.



The Housing Accountability Act (HAA) is a state law limiting a local government's decision-making authority over certain housing development projects. The state legislature first enacted the HAA in 1982, and over the years has amended the law to expand and strengthen its provisions as part of the overall recognition of the critically low volumes of housing stock in California.

The HAA involves a multitude of interconnected and overlapping government code sections. To help navigate the complexities of this state housing law, the city has developed a [library](#) of info-bulletins that help explain the evolving state housing development rules and requirements.

This bulletin focuses on the replacement requirements for development projects that propose to remove existing housing stock. The bulletin is only intended to summarize the key provisions of state law rather than cite them in total, so applicants are encouraged to familiarize themselves with all applicable laws prior to initiating a housing project that proposes to eliminate existing housing units.

BACKGROUND

The HAA is codified under Govt. Code [§65589.5](#), which is a section of state law governing the requirements of local housing elements. For more information on housing elements, refer to the city's info-bulletin on the Carlsbad Housing Plan ([IB-137](#)).

In short, the HAA establishes limitations to a local government's ability to deny, reduce the density of, or make infeasible housing development projects, emergency shelters or farmworker housing that are

Documents Referenced

Comm. Development Info-Bulletins, [Library](#)
Carlsbad Housing Element; [IB-137](#)
Housing Crisis Act (SB 330); [IB-132](#)
Inclusionary Housing Program; [IB-157](#)
Density Bonus; [IB-112](#)
Development Permit Checklist ([P-2](#))
Housing Declaration Form ([P-38](#))
Income Certification Form ([P-38B](#))
HCD Technical Assistance Letter: [12/14/23](#)
HCD Technical Assistance Letter: [08/07/23](#)

consistent with local zoning, objective development standards, and contribute to meeting the jurisdiction's Regional Housing Needs Assessment (RHNA) --- a part of state housing law that is used to determine how many new homes, and the affordability of those homes, each local government must plan for in its housing element.

CONTRIBUTING STATE HOUSING "ACTS"

Over the years, the Legislature has passed several bills that amended various state government code sections governing housing. Many of these bills used creative titles that included the word "Act" to describe their purpose and importance. This has led to some confusion since many of these different Acts affect the same government code sections.

Irrespective of their titles, a handful of legislative bills were passed that expanded upon the regulatory authority of the HAA, particularly when it comes to the replacement of existing housing stock. To help clarify the multifaceted framework of the HAA, this bulletin offers an overview of some of the more significant state bills approved since 2017 that affected the HAA. In some cases, a separate information-bulletin has been prepared that provides additional information on these other "Acts."

Housing Crisis Act (HCA), 2019 (SB 330)

The HCA set forth several housing provisions including applicant vesting rights, shortened timelines to review applications, prohibited the demolition of housing units without replacement of said units, and placed limitations on denying housing projects that meet established objective standards and introduced a "pre-

application” process. To learn more about [SB 330](#), and associated permit processing allowances under the law, refer to informational bulletin [IB-132](#). [SB 330](#) affected the following State Govt. Code Sections: [§65589.5](#), [§65905.5](#), [§65913.10](#), [§65940](#), [§65941.1](#), [§65943](#), [§65950](#), [§66300](#), [§66301](#).

Housing Crisis Act (HCA), 2021 (SB 8)

The HCA originally had a sunset date of 2025, but SB 8 extended it through 2030. Provisions of SB 8 prevent government from downsizing (reducing the permitted density of housing), limited fee increases on housing applications, and accelerated the approval process for housing projects. SB 8 amended the following Govt. Code Sections: [§65589.5](#), [§65905.5](#), [§65913.10](#), [§65940](#), [§65941.1](#), [§65943](#), [§65950](#), [§66300](#), [§66301](#).

Residential Unit Demolition, 2023 (AB 1218)

AB 1218 expanded the “no net loss” provisions in the Housing Crisis Act that prohibits cities from reducing the capacity for housing development, including the demolition/displacement protections designed to ensure that there is no net reduction of housing in the state. AB 1218 amended the following Govt. Code Sections: [§65912.114](#), [§65912.124](#), [§65940](#), [§66300](#), [§66300.5](#), [§66300.6](#).



HOUSING REPLACEMENT REQUIREMENTS

While the Legislature passed the HAA to encourage and facilitate new housing development, the Legislature also passed significant protections that help ensure new development does not displace existing tenants or reduce availability of existing housing stock. Those protections were included as part of SB 330 and later modified in 2021 (SB 8) and 2023 (AB 1218).

The section below provides an overview of the housing replacement requirements applicants need to be

aware of when considering a project that requires demolition of existing housing.

Applicability

The HAA establishes the following conditions for demolition of existing residential dwelling units.

- A *housing development project* that will require the demolition of one or more residential dwelling units may not be approved unless the project will create at least as many residential dwelling units as will be demolished. [§66300.6(a)]
- A *development project* that will require the demolition of occupied or vacant *protected units*, or that is located on a site where *protected units* were demolished in the previous five years preceding the application date may not be approved unless certain requirements are satisfied, as summarized in this info-bulletin. [§66300.6(b)]

Definitions

Housing development project

A housing development project is a project, submitted after Jan. 1, 2020, that proposes one of the following. [§66300(a)(6)]

- 100% residential development containing two or more units.
- Mixed-use development in which at least two-thirds of the square footage is residential.
- Transitional, supportive, emergency, or farmworker housing.

Development project

A development project is any activity or use requiring approval of a discretionary permit or building permit from the city. A housing development project qualifies as a development project.

Protected units

Protected units are residential dwelling units that fit one or more of the following criteria: [§66300.5(h)]

- Units occupied currently or in the last five years by a low (80% AMI) or very low (50% AMI) income household.
- Units subject to any sort of price or rent control in the last five years.

- Units subject to any sort of rent restriction in the last five years through a recorded covenant, ordinance or law.
- Withdrawn from rent or lease pursuant to the Ellis Act within the last 10 years.

Replacement Requirements

Sites with Non-Protected Units

If the site of a proposed housing development project includes residential units that do not qualify as protected units, the applicant is required to replace each of the units that will be demolished, as reflected below:

- The number of replaced units must be at least equal to the total number of residential dwelling units demolished. [§66300.6(a)]
- The replacement units must be generally the same size (square footage) and include the same number of bedrooms as the units being demolished.

Sites with Protected Units

If the site of a development project will require demolition of protected units, the applicant is required to replace each of the units (referred to as “replacement protected units”), as reflected below.

- Protected units must be replaced in both terms of unit count and in total aggregate number of bedrooms. In other words, the same total number of bedrooms contained in the protected units that previously existed on the site must be replaced. However, there is flexibility in terms of the bedroom configuration of each individual replacement unit. [§66300.5(d),(i); [HCD Technical](#)]

EXAMPLE: If a project site previously contained four protected units consisting of a studio unit, one-bedroom unit, two-bedroom unit, and three-bedroom unit, the development project must provide at least four replacement protected units that contain at least seven total bedrooms within those four units. [[HCD Technical Letter](#)]

- When replacement protected units consist of single-family dwelling (SFD) units, the replacement protected units must comply with the following: [§66300.6(b)(4)(C)(i)(I-II)]
 - Replacement protected units must contain the same number of bedrooms if the existing SFD contains three or fewer bedrooms.

- Replacement protected units must contain at least three bedrooms if the existing SFD contains four or more bedrooms.

- For housing development projects, the replacement protected units must be located on the project site and developed prior to or concurrent with the housing development project. [§66300.6(b)(2)(A)]
- For other development projects, the replacement protected units may be located on a site other than the project site, so long as it is located within the city. Additionally, the replacement protected units must be developed prior to or concurrent with the development project. [§66300.6(b)(2)(B)]
- The affordability level of the replacement protected units shall be the same or a lower income category as those households in occupancy. For example, a low-income household occupied the protected unit and therefore, the replacement protected unit must be at a low income or very low-income rent level. Lower income levels and affordable rent and affordable housing cost are defined by California Health and Safety Code. [§§5053; 50052.5]
- Replacement units must be designated for affordable rents for a period of not less than 55 years, via a recorded deed. [§65915(c)(3)(B)&(C)]
- Replaced protected units that are for sale must be sold to and occupied by an income qualified household at an affordable price, secured by a recorded deed. [§65915 (c)(3)(B)]



Inclusionary Projects

Housing development projects subject to the city's local Inclusionary Housing program requirements, should consider the following.

- Affordable units required under the city's Inclusionary Housing Program ([IB-157](#)) may also count towards replacement unit requirements, so long as the affordability level and bedroom count are the same or better.

NOTE: The purchase of inclusionary housing credits, or payment of in-lieu fee, does not satisfy replacement unit requirements --- Inclusionary unit(s) must be constructed as part of the development project to receive credit. [§66300.6(b)(2)(A)]

Density Bonus Projects

Housing development projects utilizing state density bonus need to consider the following.

- The requirements to replace protected and non-protected units as reflected in the sections above also apply to projects utilizing density bonus.
- Affordable units required under density bonus ([IB-112](#)) may count towards replaced protected unit requirements, so long as the affordability level and bedroom count are the same or better. [[HCD Technical Letter](#)]
- Applicants cannot utilize a concession, incentive, or waiver to deviate from housing replacement requirements. [§§66300.6(a)&(b)]

DISPLACEMENT PROTECTIONS

Existing tenants have some limited rights under the HAA when their home is proposed for demolition.

- All tenants have a right to stay in their unit until six months prior to construction and be provided with at least six-month's notice. This provision is applicable to all existing tenants, regardless of the tenant household income.
- If a tenant is required to leave, but the project does not move forward, those displaced tenants must be offered a chance to return to the unit and resume paying rent at their previous rent level. This provision is applicable to all existing tenants, regardless of the tenant household income.
- If an existing tenant is low income, prior to a city's approval of the housing project, the developer is required to offer the tenant

BOTH relocation assistance as well as a right of first refusal to move back into a new replaced protected unit.



HOUSING DECLARATIONS

All residential and mixed-use housing development projects are required to include Housing Declaration ([Form P-38](#)) and Income Certification ([Form P-38B](#)) forms as part of their permit application package.

All required supplemental application forms (including the two mentioned) and other requirements necessary to determine application completeness are provided in the city's Development Permit Checklist ([Form P-2](#)).

The following documentation may be considered acceptable supporting evidence when determining whether a site includes/excludes protected units.

- Current rent rolls and those preceding five years of the project application date.
- Any Ellis Act evictions that may have occurred on the site in the preceding 10 years.
- Any information necessary to determine whether an existing building is covered by local rent control/stabilization.

If the incomes of the current or previous tenants within the past five years are unknown, then it is assumed that the lower-income households occupied the units in the same proportion of lower-income households to all renter households within the jurisdiction. [§65915(C)(3)(B)(i-ii)]

YOUR OPTIONS FOR SERVICE

To file an application, or to learn more about the HAA and replacement requirements, please contact the Planning Division at 442-339-2600 or via email at Planning@carlsbadca.gov.