

# No Net Loss and Right to Return to Demolished Homes

No net loss and right to return policies prevent development projects that require demolition of existing residential structures from reducing the overall housing stock and supply of affordable housing. These policies require replacing all demolished units with units of equivalent size and replacing demolished units meeting certain criteria with units affordable to low-income households. Additionally, previously displaced low-income tenants must be given relocation assistance and the right of first refusal to rent the new comparable units at the same rent as their prior unit(s).

## Legal Context

### What Does State Law Require?

The [Housing Crisis Act of 2019](#), codified as [California Government Code Section 66300](#), prohibits a jurisdiction from approving a housing development that requires the demolition of housing units unless the new project creates at least as many units as will be demolished. Housing and non-residential developments must also replace all demolished occupied or vacant “protected units,” even if these units are unpermitted. Generally, these must be replaced with deed-restricted affordable housing. “Protected units” are defined as:

- Units deed-restricted for lower-income households within the past five years
- Units subject to rent control within the past five years
- Units occupied by lower-income households within the past five years or
- Units withdrawn from the rental market via Ellis Act within the past 10 years.

The law also includes protections for existing tenants of units that will be demolished due to a housing or non-residential development:

- All existing tenants must be allowed to remain until six months before construction starts; and
- Lower-income occupants (80% AMI or less adjusted for household size, as [defined by HUD](#)) are entitled to relocation benefits (paid before issuance of demolition, building, planning or other City permits for the project); and

## At-A-Glance

### RELEVANT STATE LAWS

[Housing Crisis Act of 2019](#)

### POTENTIAL FUNDING SOURCES

No cost. Relocation assistance paid for by the landlord.

### COST

Low

### ADMINISTRATIVE BURDEN

 Medium

Program design is generally a low lift, but enforcement is challenging and requires significant staff time.

### EXTRA CONSIDERATIONS

 Challenge to enforce

 Politically sensitive

### WHICH P?

Protection

### POTENTIAL PARTNERS

- Legal Aid Groups
- Tenant Advocacy Organizations

### OPTION FOR TOC POLICY COMPLIANCE?

Yes!



- Lower-income occupants are entitled to the option to rent or buy a comparable unit in the new development at an affordable price.

## Which Developments Does The Law Apply To?

The Housing Crisis Act applies to housing projects that will demolish existing residential units. Additionally, certain requirements apply to both housing and non-residential development projects that would demolish any “protected” units. Development projects that would demolish any protected units must provide replacement units with the same number of bedrooms. These replacement units must be at an affordable rent or sales price to households of the same or lower income category as that of the last household that occupied the unit in the past five years. The Housing Crisis Act of 2019 has a sunset date of January 1, 2030.

## How Can Jurisdictions Implement Programs That Go Beyond State Law?

**REMOVE THE SUNSET DATE:** Jurisdictions can provide no net loss and right of return provisions currently outlined in the Housing

Crisis Act without the 2030 sunset date. Jurisdictions must do this for TOC compliance credit.

**INCREASE RELOCATION ASSISTANCE:** While state law limits relocation assistance to lower-income tenants, local policies can require relocation assistance be provided to a broader range of displaced tenants. Additionally, local policies can require a larger amount of financial assistance than is required under state law. Some relocation assistance may not be monetary; jurisdictions can also provide displaced tenants with a Relocation Advisor to support them with finding interim housing or permanently relocating, with these services paid for by the developer.

**EXPAND PROTECTIONS:** Jurisdictions can require replacement of all unpermitted units, even if the unpermitted unit was not occupied by a lower-income tenant (and thus not a “protected” unit).

**ADVANCED NOTICE:** Jurisdictions can require that developers provide tenants with advanced notice of impending demolition and their right to return.

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## Program Design, Implementation and Evaluation Considerations

*The callout box below labeled “TOC Policy Requirements” describes the policy features necessary for a jurisdiction to receive credit toward TOC Policy compliance. All other policy features discussed in this document represent details found in existing policies on the subject and a jurisdiction may want to consider them when adopting or implementing a policy, but nothing is required for TOC Policy compliance unless noted as a requirement in the “TOC Policy Requirements” callout box or the [TOC Policy Administrative Guidance](#).*

### Elements of the Program

- Definitions of program eligibility. This can include which tenants are eligible.
- Notice requirements for developers. This can include how many months of advance notice must be given and what information developers must include in the notice.
- Relocation benefits. This can include access to a relocation advisor, assistance with moving costs and tenant relocation payments.
- Process for monitoring and enforcing implementation. This can include requiring the submission of a relocation plan and outlining penalties for developer noncompliance.

## Program Design Considerations

Jurisdictions may want to consider the following:

### **RENT STABILIZATION AND DEED RESTRICTIONS:**

Existing rent-stabilized units occupied by households who are not low-income can be replaced by either deed-restricted affordable units or rent-stabilized units without deed restrictions, depending on what the jurisdiction decides is more aligned with their needs.

**RENT LEVELS:** Establishing more precise income requirements for replacement affordable units to ensure deeper levels of affordability.

**UNIT SIZE:** Requiring replacement units be increased in size in situations where existing lower-income households were overcrowded.

**REQUIRED NOTICE:** Requiring that developers provide tenants and the jurisdiction with notice of proposed demolition at least 12 months in advance of the proposed vacate date. The notice can include details on the redevelopment and affordable replacement units, the right to return and specific proposed timelines. To ensure clarity and compliance, the notice would be presented as a tenancy termination notice and reviewed by the jurisdiction before distribution, following an established notification format and/or coordinated by the city.

**RELOCATION PLAN:** Requiring that developers submit a relocation plan that has been developed in coordination with tenants and knowledgeable community partners, prior to project approval.

## Program Implementation, Administration and Enforcement

No net loss and right to return provisions are generally implemented through ordinances, but having a well developed system for education and outreach, implementation assistance, and monitoring/enforcement is critical. Jurisdictions can establish a point of contact

for tenant assistance (e.g., city staff or a relocation assistance consultant), resources for legal services and information about relevant community-based organizations.

In addition to noticing by landlords, jurisdictions can work with partners to ensure that tenants understand the law, their rights, and the available resources. Jurisdictions can also provide training so that planning, housing, and building department staff understand the law and its requirements. Additionally, jurisdictions can put in place mechanisms for proactive enforcement, rather than complaint-based enforcement, and ensure developers who don't give notice, provide relocation assistance and/or honor the tenants' right of return face repercussions.



**TOC Policy Requirements:** To be compliant with TOC policy, jurisdictions must comply with all the no net loss provisions in the Housing Crisis Act with no sunset date, to the extent permitted by state or federal law. These provisions require replacing all demolished units with units of equivalent size and replacing demolished protected units with units affordable to low-income households.

Jurisdictions must also include all right of return provisions in the Housing Crisis Act with no sunset date, to the extent permitted by state or federal law. These provisions require providing displaced lower-income tenants with relocation assistance and right of first refusal to a comparable unit at an affordable rent.

## Program Evaluation

Jurisdictions can evaluate program effectiveness and equity by analyzing data on the number of units before and after unit demolition, the percentage of tenants who returned, and the affordability levels before and after the unit demolition. Additionally, program evaluations could include qualitative data, such as documentation of the experience of both tenants who were displaced and came back and those who didn't come back.

## Other Resources

### EXAMPLES\*

[City of Mountain View - Tenant Relocation](#)

[City of Berkeley - Relocation Services Code](#)

### OTHER RESOURCES

[HCD - Preserving Existing Affordable Housing](#)

[City of Los Angeles - Resident Protections Ordinance](#)

[Metropolitan Transportation Commission - Protection Policy 2: No Net Loss and Right to Return to Demolished Homes](#)

*\*Note that examples have not been vetted for full TOC Compliance.*

## Complementary Policies

### DEVELOPMENT CERTAINTY AND STREAMLINED APPROVAL

**PROCESS:** Make it easier for developers to replace demolished units more quickly by limiting public hearings and ensuring priority review in the entitlement process.

**TENANT RELOCATION ASSISTANCE:** Require developers to provide tenants whose units will be demolished or are being removed from the rental market with meaningful relocation assistance, for example, the cash equivalent of three months' rent, based on the median monthly asking rent for a similar-sized unit.

**TENANT ANTI-HARASSMENT PROTECTIONS:** These protections prohibit landlords from using threats or intimidation to influence tenants to vacate prior to demolition as a way to avoid providing relocation assistance and right to return.

*This document is intended to provide general information and does not constitute legal advice. Additional facts, facts specific to a particular situation, or future developments may affect the subjects discussed in this document. Seek the advice of your jurisdiction's legal counsel before acting or relying upon this information. For specific questions regarding TOC compliance, please reach out to [TOCpolicy@bayareametro.gov](mailto:TOCpolicy@bayareametro.gov).*