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DEMOLITION ORDINANCE

Background

- ❑ The City has long restricted the demolition and elimination of dwelling units, but rules were applied unevenly due to ambiguity in the language
- ❑ These limitations made it difficult to remove units that prevented the construction of new rental units on under-developed properties

1973: Neighborhood Preservation Ordinance

- 1970s housing market was in crisis, with skyrocketing prices
- Voters enacted the NPO to prevent bulldozing of houses and replacement by “ticky-tacky” apartment buildings
- NPO only allowed demolition where affordable housing was included in the development

1980: Rent Stabilization and Eviction for Good Cause Ordinance

- Berkeley enacted “strong” vacancy control rent stabilization, meaning that rent levels stay the same even after tenants move out
- In 1980, the vast majority of rental units in Berkeley are covered by rent stabilization
- ***However, new construction is exempt from rent stabilization***

1984 Rental Removal Ordinance

- To prevent demolition of rent stabilized housing, the Rental Removal Ordinance is enacted
- **No demolitions of rental units if the applicant is able to make a fair return without demolishing**
- Incorporated into the Zoning ordinance in 1999 at Section 23C.08 (“Demolition Ordinance”)

2008-2012: Demolition Ordinance Revisions

- ❑ Required findings made it difficult to demolish obsolete housing stock unless deemed unsafe and unfeasible to rehabilitate by the Building Official
- ❑ Such limitations made it difficult to remove units when warranted and prevented the creation of new rental units on under-developed properties
- ❑ Consideration of amendments began in 2010
- ❑ City Council referred amendments in 2011

2008-2012: Demolition Ordinance Revisions

- 4x4 Committee and Council recommended that a new ordinance be based around the following principles:
 1. Sitting tenants are protected and “made whole” with moving expenses, right of first refusal, etc.
 2. The project will at least as many units as the existing building;
 3. The affordability level of the demolished units is preserved by replacement with an equal or greater number of similarly affordable units;
 4. *Inclusionary requirements still apply to all market-rate units.*

Background of Current Ordinance

- ❑ Planning Commission forwarded a proposed amendment in April 2013
- ❑ City Council forward two versions back to the Housing Advisory Commission (HAC) and Planning Commission (PC) in July 2013
- ❑ Staff proposed a third alternative to HAC and PC in August 2013
- ❑ HAC and the Planning Commission considered all three alternatives in Fall 2013

Background of Current Ordinance

- ❑ Planning staff initiated an update of the 2010 Affordable Housing Mitigation Nexus Study in July 2014
- ❑ Nexus Study included a new section analyzing impact of demolishing and replacing existing units
- ❑ Updated Nexus Study was completed in March 2015, and presented to City Council in July 2015
- ❑ Methodology failed to accurately capture impact of demolishing rent-stabilized units and those that are less expensive due to their age
- ❑ Staff initiated a focused nexus study in January 2016

Current Demolition Ordinance

- ❑ Demolition ordinance revised March 2016
- ❑ Focused nexus study completed September 2016
- ❑ Proposed demolition impact fee submitted to Council for adoption December 2016
- ❑ Work session on Demolition Ordinance scheduled with City Council for March 2016

Nexus Study Overview

□ Nexus model

- Supreme Court states that (1) gov't must demonstrate nexus between legitimate state interest and exaction imposed by City and (2) exaction must be “*roughly proportional*” to the impact the project is creating
- Study establishes the *maximum* fee that the City may legally charge

□ Demolition Impact Fee Methodology

- Establish a prototype representing a typical rent-stabilized building in Berkeley
- Determine affordability of units in rent-stabilized prototype
- Calculate affordability gap for lower income households
- Calculate the maximum fee for demolition of rent-stabilized units

Concerns Raised About Current Demolition Ordinance

- If Landlord elects to replace units with new BMR units:
Unit size is not required to be comparable to units being replaced
- If Landlord elects to pay in-lieu fee (no BMR units):
Tenants can return but Landlord can set rent at market rates

Alternatives for Further Study

- Cities can legally re-impose rent stabilization on new developments that result from demolition.
- Rent stabilization applies if the building is re-rented within five years.
- The building must be withdrawn through the Ellis Act before being demolished.
- Los Angeles, Santa Monica, and West Hollywood have had success with this approach.
- *Does this create additional rights for buildings that have already been withdrawn through Ellis Act?*

QUESTIONS?