

Article 3: Supplemental Development Regulations

Division 12: Dwelling Unit Protection Regulations (“Dwelling Unit Protection Regulations” added 10-30-2020 by O-21254 N.S.; effective 11-29-2020.)

§143.1201 Purpose of the Dwelling Unit Protection Regulations

The purpose of these regulations is to specify when and how a residential *development* that proposes demolition of existing *dwelling units* or *protected dwelling units* must replace those *dwelling units*. These regulations are intended to implement California Government Code Section 66300(d) and the City of San Diego’s pro-housing policies by requiring replacement of *dwelling units* and *protected dwelling units* for any residential *development* subject to this Division.

(“Purpose of the Dwelling Unit Protection Regulations” added 10-30-2020 by O-21254 N.S.; effective 11-29-2020.)
(Amended 1-16-2024 by O-21758 N.S.; effective 3-16-2024.)

[Editors Note: Amendments as adopted by O-21758 N.S. will not apply within the Coastal Overlay Zone until the California Coastal Commission certifies it as a Local Coastal Program Amendment.]

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§143.1203 When the Dwelling Unit Protection Regulations Apply

This Division applies to the following *developments* with a complete *development* application submitted on or after January 1, 2020:

- (a) *Single dwelling unit development*;
- (b) *Multiple dwelling unit development*;
- (c) Mixed-use *developments* consisting of residential and non-residential uses;
- (d) Transitional housing facilities and *permanent supportive housing*; and
- (e) Commercial *development* in zones that permit residential *development*.

(“When the Dwelling Unit Protection Regulations Apply” added 10-30-2020 by O-21254 N.S.; effective 11-29-2020.)
(Amended 1-16-2024 by O-21758 N.S.; effective 3-16-2024.)

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§143.1207 Definitions

The following definitions apply to this Division in addition to the definitions in Chapter 11, Article 3, Division 1 of the Land Development Code. Each word or phrase that is defined in this Division or in Chapter 11, Article 3, Division 1 of the Land Development Code appears in the text in italicized letters.

- (a) *Protected dwelling unit* means any of the following:
 - (1) *Dwelling units* located outside of the Barrio Logan Plan Area that are or were subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to *very low income* or *low income* households during the five-year period preceding the *development* application.
 - (2) *Dwelling units* located outside of the Barrio Logan Plan Area that are or were rented by *very low income* or *low income* households during the five-year period preceding the *development* application.
 - (3) *Dwelling units* located within the Barrio Logan Plan Area that are or were subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to *very low income* or *low income* households during the seven-year period preceding the *development* application.
 - (4) *Dwelling units* located within the Barrio Logan Plan Area that are or were rented by *very low income* or *low income* households during the seven-year period preceding the *development* application.
 - (5) SRO hotel rooms or other *dwelling units* that were withdrawn from rent or lease in accordance with California Government Code Sections 7060 through 7060.7 during the 10-year period preceding the *development* application.

(“Definitions” added 10-30-2020 by O-21254 N.S.; effective 11-29-2020.)
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§143.1210 Replacement of Dwelling Units

Development subject to this Division shall include at least as many *dwelling units* as the most recent permitted *development* on the *premises*.

(“*Replacement of Dwelling Units*” added 10-30-2020 by O-21254 N.S.; effective 11-29-2020.)

§143.1212 Replacement of Protected Dwelling Units

Development subject to this Division that proposes demolition of vacant or occupied *protected dwelling units* on the *premises* shall comply with all the following:

- (a) The *development* shall include at least as many *dwelling units* as the greatest number of permitted *dwelling units* that existed on the *premises* within the five-year period preceding the application submittal date. In the Barrio Logan Community Plan Area, *development* shall include at least as many *dwelling units* as the greatest number of permitted *dwelling units* that existed on the *premises* within the seven-year period preceding the application submittal date.
- (b) The *development* shall replace all existing or demolished *protected dwelling units* on the *premises*.
- (c) The *protected dwelling units* shall be replaced as follows:
 - (1) For a *development* containing any occupied *protected dwelling units*, the *development* must contain at least the same number of replacement *protected dwelling units*, of equivalent size and *bedrooms*, and must be made affordable to and occupied by persons and families in the same or a lower income category as the occupied *protected dwelling units*. For unoccupied *protected dwelling units* in the *development*, the replacement *protected dwelling units* shall be made affordable to and occupied by persons and families in the same or lower income category as the last household in occupancy. If the income category of the last household is unknown, it is rebuttably presumed that the *protected dwelling units* were occupied by *very low income* and *low income* renter households in the same proportion of *very low income* and *low income* renter households to all renter households within the City of San Diego, as determined by the most recently available data from the United States Department of Housing and Urban Development’s Comprehensive Housing Affordability Strategy database, and replacement *protected dwelling units* shall be provided in that same percentage.

- (2) If all of the *protected dwelling units* are vacant or have been demolished within the five years preceding the application submittal date, the *development* must contain at least the same number of replacement *protected dwelling units*, of equivalent size and *bedrooms*, as existed at the highpoint of those units in the five-year period preceding the application submittal date, and must be made affordable to and occupied by persons and families in the same or a lower income category as those in occupancy at that same time. In the Barrio Logan Community Plan Area, if all of the protected dwelling units are vacant or have been demolished within the seven years preceding the application submittal date, development must contain at least the same number of replacement protected dwelling units, of equivalent size and bedrooms, as existed at the highpoint of those units in the seven-year period preceding the application submittal date, and must be made affordable to and occupied by persons and families in the same or lower income category as the last household in occupancy. If the income categories are unknown for the highpoint, it is rebuttably presumed that the *protected dwelling units* were occupied by *very low income* and *low income* renter households in the same proportion of *very low income* and *low income* renter households to all renter households within the City of San Diego, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database, and replacement *protected dwelling units* shall be provided in that same percentage.
- (3) All replacement *protected dwelling unit* calculations resulting in fractional units shall be rounded up to the next whole number.
- (4) All rental replacement *protected dwelling units* shall be affordable for at least 55 years through a recorded affordability restriction documented by written agreement, and a deed of trust securing the agreement, entered into by the *applicant* and the President and Chief Executive Officer of the San Diego Housing Commission.

- (5) All for-sale replacement *protected dwelling units* shall be subject to the following provisions:
- (A) The initial occupant of all for-sale affordable *protected dwelling units* shall be a *very low income* or *low income* household.
- (B) Prior to, or concurrent with, the sale of each *protected dwelling unit*, the *applicant* shall require the buyer to execute and deliver a promissory note in favor of the San Diego Housing Commission so that the repayment of any initial subsidy is ensured.
- (C) Each for-sale *protected dwelling unit* shall be occupied by the initial owner at all times until the resale of the *protected dwelling unit*.
- (D) Upon the first resale of a *protected dwelling unit*, the seller shall comply with all conditions regarding the sale of a *dwelling unit*, as applied by the San Diego Housing Commission, and as set forth in California Government Code Section 65915(c)(2).
- (d) The *applicant* shall provide existing residents of *protected dwelling units* with all of the following:
- (1) The ability to occupy their *dwelling units* until six months before the start of construction activities with proper notice, pursuant to California Government Code Sections 7260 through 7277. In the Barrio Logan Community Plan Area, any existing residents shall be allowed to occupy their *dwelling units* until six months before the start of construction activities with proper notice, which shall occur at least 12 months prior to the anticipated termination of residency. The *applicant* shall deliver a notice of intent to terminate residency to the San Diego Housing Commission and to each resident household.
- (2) The ability to rent their *dwelling units* at the prior rental rate if the demolition does not proceed and the *dwelling unit* is returned to the rental market.
- (3) To those households that remain in a *protected dwelling unit*, the *applicant* shall provide:

- (A) Relocation benefits consistent with the requirements of California Government Code Sections 7260 through 7277 for public agencies or the Residential Tenant Protection Regulations located in Chapter 9, Article 8, Division 7, whichever provides greater relocation benefits. The *applicant* for development in the Barrio Logan Community Plan Area shall engage a qualified third-party contractor or consultant to oversee the provision of the required relocation benefits. The third-party contractor or consultant shall provide a letter to the San Diego Housing Commission certifying compliance with the relocation benefits requirements after completion of the relocation process.
- (B) A right of first refusal for a comparable *dwelling unit* available in the new *development* affordable to the household at an affordable rent or affordable housing cost based on household income in accordance with Table 143-12A.
- (C) For *development* located within the Barrio Logan Community Plan Area, residents living within one mile of the *development* at the time of application shall receive priority for 75 percent of the affordable *dwelling units* in the *development* that are reserved for *very low income*, *low income*, or *moderate income* households.

Table 143-12A
Affordability Levels for Replacement *Protected Dwelling Units*

	Rental Dwelling Units	For-Sale Dwelling Units
	shall be affordable, including an allowance for utilities, at a rent that does not exceed:	shall be affordable at an affordable housing cost that does not exceed:
Very Low Income households	30 percent of 50 percent of the area median income, as adjusted for household size appropriate for the unit.	30 percent of 50 percent of the area median income, as adjusted for household size appropriate for the unit.
Low Income households	30 percent of 60 percent of the area median income, as adjusted for household size appropriate for the unit.	30 percent of 70 percent of the area median income, as adjusted for household size appropriate for the unit.

- (e) Any *protected dwelling units* replaced in accordance with this Division may be counted toward compliance with the Inclusionary Affordable Housing Regulations in Chapter 14, Article 2, Division 13, the Affordable Housing Regulations in Chapter 14, Article 3, Division 7, and the Coastal Overlay Zone Affordable Housing Replacement Regulations in Chapter 14, Article 3, Division 8.
- (f) *Very low income, low income, and moderate income* households located within an area identified as a Low Resource or High Segregation and Poverty Opportunity Area by the California Tax Credit Allocation Committee when the *development application* is *deemed complete*, shall receive priority preference for new covenant-restricted *dwelling units* created under this Division.

(“*Replacement of Protected Dwelling Units*” added 10-30-2020 by O-21254 N.S.; effective 11-29-2020.)

(Amended 1-27-2022 by O-21411 N.S.; effective 2-26-2022.)

(Amended 1-16-2024 by O-21758 N.S.; effective 3-16-2024.)

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Note: The priority preference for households that qualify for affordable homes as set forth in Sections 142.1304(e)(3), 143.0720(p), 143.0860(e), 143.1005(b)(4), and 143.1212(f) will not be implemented until a program can be developed and a funding source can be approved as part of a future action of the Housing Authority or City Council to ensure successful implementation. For Sections 143.0860(e) and 143.1005(b)(4), only portions applicable to the priority preference are delayed.