

REPLACEMENT UNIT DETERMINATION FORM

ATTENTION: Please review [SB 330 Director's Letter](#) prior to completing this form. It contains critical guidance on the replacement unit determination process.

This form enables the City's Housing Department to provide an applicant of a housing development project with a Replacement Unit Determination (RUD) pursuant to SB 330, the Housing Crisis Act of 2019, as amended in 2021.

SB 330 prohibits the approval of any proposed housing development project on a site that will require the demolition of existing dwelling units or occupied or vacant "Protected Units" (see below) unless the project replaces those units. Replacement requirements apply only to projects that either:

- a. Submit a complete project application pursuant to California Government Code Section 65943 to the City Planning Division on or after January 1, 2020; OR
- b. As a ministerial (by-right) project, such as AB 2162 projects, submit an application pursuant to California Government Code Section 65941.1 to the City Planning Division on or after January 1, 2022.

Please read the summary below carefully as it discusses the requirements that limit the ability to demolish residential units and whether affordable units will be required in the proposed project.

Summary of Requirements - *Applies to both new rental projects and new for-sale projects.*

1. **Replacement of Existing Residential Dwelling Units / No Net Loss** - The project must match or exceed the greatest number of dwelling units that existed on the project site within the past five years.
2. **Replacement of Existing or Demolished Protected Units** - The project must also replace all existing or demolished Protected Units. Protected Units are dwelling units that — within five years prior to the application for a RUD — are or were:
 - 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
 - Subject to any form of rent or price control through a public entity's valid exercise of its police power; or
 - Occupied by lower or very low income households (an Affordable Protected Unit); or
 - Units withdrawn from rent or lease per the Ellis Act and the City Ellis Act Ordinance (San José Municipal Code Chapter 17.23, part 11) within the past 10 years.
3. **RUD Application Process** - The Housing Department will use the information on this form and as provided by the owner/s, existing tenants, and as further gathered, to determine how many Protected Units exist and how many Replacement Units are needed in the new project. A RUD may take up to eight weeks to process.
 - **Determining Affordable Protected Units** - Whether a unit qualifies as a Protected Unit under Section 2.C is determined by the income level of occupants. This information is also used to determine the income category a Protected Unit falls into for replacement purposes. Occupants' income levels are ascertained through tax returns, pay stubs, etc. Using contact and address information provided by the Owner, Housing Department staff will send requests for information to each occupant of the existing units. The Owner is responsible to engage with occupants to ensure a timely response.
 - **Use of HUD Comprehensive Housing Affordability Strategy (CHAS) database:** If occupants do not provide sufficient income information, the determination of affordability and income category will default to the percentage of Very Low and Low income renters in the jurisdiction as shown in the CHAS database. As of November 1, 2021, in San José, CHAS is at 38% Very Low Income and 15% Low income. The remaining 47% of the units are presumed above Low-income. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. *continued*

4. **Replacement of Protected Units, subject to the Apartment Rent Ordinance, last occupied by persons or families at above low-income** - For projects with applications submitted before January 1, 2022, the City has the option to require that the proposed project shall provide:
- Replacement units affordable to low-income households for a period of at least 55 years (rental units shall be subject to a recorded covenant); OR
 - Require the units to be replaced as units subject to the Rent Stabilization Ordinance in compliance with San José Municipal Code Chapter 17.23, part 11.
5. **Relocation, Right of Return, Right to Remain for Occupants of Protected Units** - SB 330 provides for the right of first refusal for comparable units (i.e., same bedroom type) in the Owner's proposed new housing development to occupants of Protected Units (for project applications received after January 1, 2022, this right and relocation rights will be limited to lower income tenants). NOTE: Replacement units must be of the same number of bedrooms/type of units demolished (California Governance Code 65915 (c)(3)(B)). The comparable replacement units must be provided at a rent or sales price affordable to the same or lower income category. Occupants of Protected Units also are entitled to receive relocation pursuant to state or local law, whichever provides greater assistance, and have the right to remain in their unit until six months before the start of construction.

For questions about RUD or this application, please contact Darius Brown at darius.brown@sanjoseca.gov.

INSTRUCTIONS

- Complete this form and submit it with all items outlined in the application package below.
- Any outstanding documentation must be received within 30 days of the date this application was signed by Owner/s.
- There are two Affidavit options on pages 7 and 8. Please only complete the applicable option, either
 - a. The Property Owner is the applicant, OR
 - b. The Applicant and Owner are separate entities. In this case, you must also attach a letter of Owner's Acknowledgement, as instructed on page 8.

APPLICATION PACKAGE

HOW TO SUBMIT:

This package must accompany your project Development/Use Application. Follow the instructions on the Development/Use Application form. Please ensure that you save all forms and documents as PDF files.

WHAT TO SUBMIT. Please include the following in your application package:

- [REPLACEMENT UNIT DETERMINATION FORM](#) - This form, fully completed and signed.
- A completed [DEVELOPMENT/USE APPLICATION](#)
- ADDRESSES OF EXISTING UNITS including the last former email or mailing address of former tenants.
- PROOF OF VACANCY OR OCCUPANCY STATUS within the last five years, such as utility bills, property tax bills, and IRS forms with W2s
- RECORDED GRANT DEED
- PRELIMINARY TITLE REPORT showing all current owners Ellis documents, tenant relocation documents (ARO or Tenant Protection Ordinance PO units), if available
- OWNER'S LETTER OF ACKNOWLEDGEMENT only if the Applicant is not the property owner; see page 8.

**FOR ALL ATTACHMENTS: PLACE THE PROJECT ADDRESS AT TOP OF EACH PAGE
FOR INFORMATION YOU ARE UNABLE TO PROVIDE, PLEASE ATTACH AN EXPLANATION.**

3. EXISTING PROPERTY

3.a. Enter APN/S SEE WWW.SCCASSESSOR.ORG USE A COMMA BETWEEN MULTIPLE NUMBERS:

3.b. Enter Lot Numbers:

3.c. Do any buildings on this property have a Certificate of Occupancy issued on or before Sept. 7, 1979? Yes No

3.d. Were any units withdrawn from rent or lease pursuant to Municipal Code Chapter 17.23 part 11 within the last 10 years? Yes No If yes, provide the date (mm/dd/year):

3.e. In the table, please enter the data for all units of all buildings in the complex within the last five years. Copy and attach this page if further room is needed for this description.

Building Address & Unit #	Certificate of Occupancy Date	# Units in Building	# of Bedrooms in Each Unit
TOTAL # of Bedrooms and # of Units in Complex:			

3.f. **DESCRIPTION & NOTES** - Please describe the number and type of existing units, existing buildings, and any APN changes within the last five years. Add any miscellaneous project details, notes, comments, etc.:

4. TENANT INFORMATION TABLE

The Housing Department will use the information in this table to contact occupants as well as to inform the RUD analysis. Providing accurate information benefits your project timeline. If additional rows are needed to list all occupants, please copy this page and complete it and attach to the application.

- For any single-family dwellings (SFDs), please provide the same information regarding the occupants.

Tenant Name	Unit #	# of Bedrooms	Monthly Rent	Tenancy Start Date	Phone #	Email Address
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						
21						
22						
23						
24						
25						

If a unit is not rented, please use the space below the table to explain its current use and last date of tenancy.

Unit #	Last Date of Tenancy	Current Use
1		
2		
3		
4		
5		

7. OWNER'S SIGNATURE BLOCK & AUTHORIZING DOCUMENTS

IMPORTANT: SUBORDINATIONS WILL BE REQUIRED, IF APPLICABLE

Owner understands that any city land use covenant generated following the completion of this Replacement Unit Determination, must be senior to any deed/s of trust recorded against the real property on which Owner’s proposed project will sit and that Owner is responsible for obtaining signatures from their respective lender/s for any required subordination/s. All Owners initial here:

All documentation must be received within 30 days of the date this application was signed by Owner/s.

• SIGNATURE OF OWNER

DATE

Under penalty of perjury, I certify that the information presented in this application is true and accurate to the best of my knowledge. Title 18, Section 1001 of the U.S. Code states that a person is guilty of felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government.

• SIGNATURE OF OWNER

DATE

Under penalty of perjury, I certify that the information presented in this application is true and accurate to the best of my knowledge. Title 18, Section 1001 of the U.S. Code states that a person is guilty of felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government.

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A Digital ID signature is required; see our [Digital ID Signature instructions](#). By signing this application, you acknowledge that you are the property owner/s or a legally authorized agent of the property owner/s. If additional signatures are needed, please copy this page and attach to application.

8a. OWNER'S AFFIDAVIT Use when the Property Owner is the Applicant

Regarding the property at *enter ADDRESS:*

Enter **APN/S** USE A COMMA BETWEEN MULTIPLE NUMBERS:

Enter OWNER or ENTITY name: _____, standing as a *check one:*

LLC **LP** **Corporation** **Other:** _____ (collectively, "Owner") hereby certify that:

1. Owner is the legal owner of the above-referenced real property ("Property"); and
2. That the person/s identified below ("Authorized Signatory/ies") has/have been legally authorized to sign on Owner's behalf as evidenced by the separate instrument/s attached herewith; and
3. The documents furnished herewith represent the full and complete information required for the Replacement Unit Determination requested for the Property and that the facts, statements, and information presented are true and correct to the best of Owner's knowledge and belief.

Owner declares under penalty of perjury under the State of California that the foregoing is true and correct.

Executed on *enter DATE* _____ at *enter CITY* _____, California

● AUTHORIZED SIGNATORY	PRINT NAME
● AUTHORIZED SIGNATORY	PRINT NAME
● AUTHORIZED SIGNATORY	PRINT NAME
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A Digital ID signature is required; see our [Digital ID Signature instructions](#). By signing this application, you acknowledge that you are the property owner/s or a legally authorized agent of the property owner/s. If additional signatures are needed, please copy this page and attach to application.

This form requires notarization. We accept electronic notarization or attach the notarization.

8b. APPLICANT AFFIDAVIT & OWNER ACKNOWLEDGEMENT Use when Applicant and Owner are separate entities

Regarding the property at *enter ADDRESS:*

Enter **APN/S** USE A COMMA BETWEEN MULTIPLE NUMBERS:

I, *enter APPLICANT name:*, hereby referred to as "Applicant" and standing as a *check one:* LLC LP Corporation Other: hereby certify that:

- Applicant is the potential future developer of the above-referenced real property ("Property") owned by *enter PROPERTY OWNER name:*, standing as a *check one:* LLC LP Corporation Other: , (collectively, "Owner"); and
- That the person/s identified below ("Authorized Signatory/ies") has/have been legally authorized to sign on Owner's behalf as evidenced by the separate instrument/s attached herewith; and
- The documents furnished herewith represent the full and complete information required for the Replacement Unit Determination requested for the Property and that the facts, statements, and information presented are true and correct to the best of Applicant's knowledge and belief.

Applicant declares under penalty of perjury under the State of California that the foregoing is true and correct.

Executed on *enter DATE* at *enter CITY*, California

• PROPERTY OWNER SIGNATURE	PRINT NAME
• PROPERTY OWNER SIGNATURE	PRINT NAME
• PROPERTY OWNER SIGNATURE	PRINT NAME
• PROPERTY OWNER SIGNATURE	PRINT NAME

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This form requires notarization. We accept electronic notarization or attach the notarization.

OWNER'S ACKNOWLEDGEMENT - YOU MUST ATTACH a letter from the Owner, on letterhead as applicable, to the City, attesting to ownership of the Property and confirming that Applicant is the potential future developer of the Property, that Owner is aware of, has no objections to, and authorizes the Applicant to submit a Replacement Unit Determination for the Property.

- If the Owner is an LLC, the letter must be signed by all Managers or Managing Members.
- If the Owner is a LP, the letter must be signed by all General Partners.
- If the Owner is a Corporation, the letter must be signed by the President, Board Chairperson, or CEO and the Secretary or Chief Financial Officer.