

REPLACEMENT UNIT DETERMINATION FORM

ATTENTION: Please review the [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 a Replacement Unit Determination (RUD) application to an applicant whose development project involves demolition of residential units, pursuant to SB 330, the Housing Crisis Act of 2019 (Government Code 66310 et seq., as amended).

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:

- Submit a complete project application pursuant to California Government Code Section 65943 to the City Planning Division on or after January 1, 2020; OR
- 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 carefully read the summary below, which outlines the limitations to demolishing residential units and whether affordable units will be required in the proposed project.

**For questions about RUD or this application,
please contact Pedro Leal at pedro.leal@sanjoseca.gov.**

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 Low-Income 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 - Units withdrawn from rent or lease per the Ellis Act and the City Ellis Act Ordinance (San José Municipal Code Chapter 17.23, part 11) within the past 10 years.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 that 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

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not provide sufficient income information, the determination of affordability and income category will default to the percentage of Very Low-income and Low-income renters in the jurisdiction as shown in the CHAS database. As of September 5, 2023, in San José, CHAS is at 42% Very Low-Income and 16% Low-income. The remaining 42% of the units are presumed above Low-income. All replacement calculations resulting in fractional units shall be rounded up to the next whole number.

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.

6. AB 1218 applies the demolition protections for Protected Units to all development projects, not just housing developments. It specifies if the development project is not a housing development project, the proponent must ensure the required replacement housing is developed prior to, or concurrently with, the development project. It applies to protected units demolished on or after January 1, 2020.

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 How to Submit instructions on that form. Be sure to save all forms and documents as PDF files.

WHAT TO SUBMIT

Include all of the following in your application package. For attachments, show the project address at top of each page. For information you are unable to provide, please attach an explanation.

- REPLACEMENT UNIT DETERMINATION FORM - This form, fully completed and signed.
- [DEVELOPMENT/USE APPLICATION](#) - Completed and signed.
- 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.

Staff will assign FILE #	
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INSTRUCTIONS. Download and save this computer-fillable form to your computer. Signatures, if required, must be a Digital ID signature. Follow instructions for [Digital Forms & Signatures](#).

1. CONTACT INFORMATION

Who is the primary project contact? Owner Applicant Owner's Agent/Representative

PROPERTY OWNER NAME:

TITLE IF APPLICABLE:

FIRM NAME IF APPLICABLE:

EMAIL:

PHONE:

MAILING ADDRESS:

APPLICANT NAME *only if different from Property Owner:*

TITLE IF APPLICABLE:

FIRM NAME IF APPLICABLE:

EMAIL:

PHONE:

MAILING ADDRESS:

OWNER'S AGENT/REPRESENTATIVE NAME *if applicable:*

EMAIL:

PHONE:

MAILING ADDRESS:

2. PROPOSED PROJECT

Please describe the proposed construction/conversion. Include the proposed total number of residential units, number of bedrooms per unit, and whether the proposed units are for sale or rent:

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							
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18							
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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

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A Digital ID signature is required; see [Digital Signature instructions](#). By signing this application, you acknowledge that you are the property owner, the legally authorized agent of the property owner, a qualified tenant, or other signatory as allowed by [San José Municipal Code Section 20.100.110](#).

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
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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:

1. 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

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 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

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If additional signatures are needed, please copy this page and attach to application.

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.

9. INDEMNIFICATION AGREEMENT FOR HOUSING REPLACEMENT UNIT DETERMINATION APPLICATIONS

Applicant submitted a Replacement Unit Determination (RUD) application to the City of San José Planning Division on (enter date)_____ for the following development permit and address:

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Applicant hereby expressly agrees in connection with the processing of Applicant's Project application(s) to each and every one of the following terms and conditions:

1. Applicant agrees, as part of and in connection with each and any of the application(s), to defend, indemnify, and hold harmless the City of San José ("City") and its officers, contractors, consultants, attorneys, employees and agents from any and all claim(s), action(s), or proceeding(s) (collectively referred to as "proceeding") brought against City or its officers, contractors, consultants, attorneys, employees, or agents to challenge, attack, set aside, void, or annul:
 - Any approvals issued in connection with any of the above- described applications by City; and/or
 - b. Any action taken to enforce the Housing Crisis Act of 2019, as amended or California Relocation law pursuant to California Government Code Section 7260 et seq. and California Code of Regulations 25 CCR 6000 et seq.

Applicant's indemnification includes, but is not limited to, damages, fees and/or costs awarded against or incurred by City, and costs of suit, claim or litigation, including without limitation attorneys' fees and other costs, liabilities and expenses incurred in connection with such proceeding, whether incurred by Applicant, City, and/or parties initiating or involved in such proceeding.
2. Applicant agrees to indemnify City for all of City's costs, fees, and damages incurred in enforcing the indemnification provisions of this Agreement.
3. Applicant agrees to defend, indemnify and hold harmless City, its officers, contractors, consultants, attorneys, employees and agents from and for all costs and fees incurred in additional investigation or study of, or for supplementing, redrafting, revising, or amending, any document (such as a relocation plans) if made necessary by said proceeding, and if Applicant desires to pursue such City approvals and/ or clearances, after initiation of the proceeding and that are conditioned on the approval of these documents.
4. In the event that Applicant is required to defend City in connection with such proceeding, City shall have and retain the right to approve:
 - The counsel to so defend City; and
 - All significant decisions concerning the manner in which the defense is conducted; and
 - Any and all settlements, which approval shall not be unreasonably withheld.
5. City shall also have and retain the right to not participate in the defense, except that City agrees to reasonably cooperate with Applicant in the defense of the proceeding. If City chooses to have counsel of its own defend any proceeding where Applicant has already retained counsel to defend City in such matters, the fees and expenses of the additional counsel selected by City shall be paid by City. Notwithstanding the immediately preceding sentence, if City's Attorney's Office participates in the defense, all City Attorney fees and costs shall be paid by Applicant.
6. Applicant's defense and indemnification of City set forth herein shall remain in full force and effect throughout all stages of litigation including any and all appeals of any lower court judgments rendered in the proceeding.

After review and consideration of all the foregoing terms and conditions, Applicant, by signature on the Affidavit, hereby agrees to be bound by and to fully and timely comply with all of the foregoing terms and conditions.

10. AFFIDAVIT

Under the penalty of perjury, I declare the information stated on this form is true to the best of my knowledge. I acknowledge that any false or misleading information will constitute grounds for denial of the application for the license; or if the license is issued in reliance on information in this affidavit which is false or misleading, then such information will constitute grounds for revocation of the license so issued..

SIGNATURE of APPLICANT

PRINT NAME

DATE [MM/DD/YYYY]

A Digital ID signature is required; see [Digital Signature instructions](#). By signing this application, you acknowledge that you are the property owner, the legally authorized agent of the property owner, a qualified tenant, or other signatory as allowed by [San José Municipal Code Section 20.100.110](#).