

Chapter 4

Constraints on Housing



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4.1 Introduction

The purpose of this chapter, per Government Code Section 65583(a)(5-6), is to identify actual and potential nongovernmental and governmental constraints that limit the development, maintenance, or improvement of housing. This includes constraints such as land and construction costs, access to financing, permit fees and taxes, and development standards. A thorough understanding of the constraints to development can help create appropriate policy responses to mitigate constraints and make it easier and more affordable to develop housing.

State law requires the Housing Element to include the following specific item that relates to discussion of planning processes (section 5.3.7).

- **Time Between Project Approval and Permit Application Submittal** - We provide an analysis of the length of time between receiving approval for a housing development and submittal of an application for building permit. A look at major development projects in the last 7 years show that the time between the approval of a housing development application and submittal of an application for building permits can be between one month and approximately three and half years. The City also allows applicants to begin the building permit process before a project is officially approved. See *Table 4-11* and Appendix E for an overview of project timelines.

4.2 Nongovernmental Constraints

State law (California Government Code, Section 65583(a)(6)) requires housing elements to contain an analysis of nongovernmental constraints to the development, improvement, or maintenance of housing for all income levels, including the availability of financing, the price of land, and the cost of construction. Nongovernmental constraints are largely determined by market conditions over which local jurisdictions have little control. However, local governments can influence market conditions and their associated costs, even if only indirectly. Governmental interventions that affect nongovernmental constraints will be explored in more detail in Section 5.3.

4.2.1 Availability of Financing

The availability of financing is an important aspect of the ability to construct new housing. In San José in recent years, the availability of financing has not been a constraint on the supply of housing. Construction costs as discussed in the next section, have been the most significant constraint. Prior to the COVID-19 pandemic, financing has been generally available at reasonable rates for construction. Rates remained very favorable through the majority of the pandemic,

Nongovernmental constraints are largely determined by market conditions. However, local governments can influence market conditions and their associated costs, even if only indirectly.

but the market uncertainty caused by the pandemic has made lenders more cautious. The growth of inflation and rising interest rates in 2022 may start to have an impact on the availability of financing moving forward, but it remains to be seen what the long-term impact will be in San José.

As was the case in the previous housing element update, new construction in San José for multifamily housing is dominated by a handful of very large publicly-traded or privately-held firms and/or real estate investment trusts (REITs), which tend to have easy access to financing or the ability to finance projects themselves. Lenders also tend to favor multifamily rental housing over housing intended for ownership. This is likely due to the higher demand and return on investment with rental housing coupled with the increased associated liability risks with providing for-sale housing types.

Overall, the high demand for housing coupled with the strong regional job market has made San José an attractive location for investment, but other factors have constrained the supply of housing outside of financing availability.

4.2.2 Market-Driven Costs

Price of Land

The price of land varies widely across the City of San José given its size, diversity of uses, and built densities. An analysis conducted in 2019 by the City's consultant, David Paul Rosen and Associates, found that multifamily land prices have been trending upward since the Great Recession. From 2011 to 2015, land prices rose at annual rate of 23.6%. From 2015 to 2019, prices continued rising rapidly, particularly amongst properties designated for high density, with those increasing at a rate of 22.9%.

In real estate economics, land cost is traditionally somewhat elastic. While underlying land costs are generally informed by recent transactions within a submarket, projects that propose redevelopment of a property also factor in the residual land value — the amount a developer can afford to pay for the land when all other costs and revenues have been considered. Conventional thinking around residual land value suggests that while rents are high in San José, the high costs associated with construction would bring down the price of land. Land values should also take into account any increase in City fees and taxes. However, the above-mentioned analysis found that in San José there is “no apparent correlation between the sales price trends and the City's land use and development fee regulatory actions affecting land. Rather the trends appear to primarily reflect market and economic cycles.”

A number of factors affect the relative high cost of land in San José:

- Long-term landholders may be less incentivized to sell because they maintain a low tax base on the property;
- Multigenerational or multiple owners can make consensus on selling difficult to reach;
- In urban village areas, of which several are transitioning from primarily commercial to mixed-use or residential, there may be properties already occupied by businesses that are paying good rent, and the owner is thus reluctant to sell; and
- The perception of a strong real estate market, major employers moving in, and/or impending improvements, such as new transit and amenities, may create an expectation of higher future land values that the seller is willing to wait for.

In these instances, developers must either choose to pay over the residual land value for the property or look for other options.

Since this analysis in 2019, data from CoStar, an online real estate database, shows that price growth slowed in the multifamily sector in 2020 at the onset of the pandemic. Due to the uncertainty of the market, the volume of sales was down in 2020 and 2021. Additionally, analysis conducted in 2022 by Century Urban, a City consultant, found that the median land price per multifamily unit in San José was \$50,000 and the maximum was \$125,000 based on 17 comparable data points. Given the volume of sales during the pandemic, many property owners seemed to have wanted to wait for more market certainty before selling, however, sales started to trend upwards in early 2022. With this recent data, there is reason to believe that land prices in San José continue to reflect market and economic cycles rather than any City actions affecting land.

According to Redfin, an online real estate brokerage, the median single-family price in San José in April 2022 was \$1,750,000, reflecting an increase of over 24% from April of 2021. Median prices for single-family properties vary widely throughout the City, with averages between \$2,000,000 to \$2,500,000 in the West San José and Evergreen areas and averages of \$1,000,000 to \$1,100,000 in Alum Rock and Central San José. All areas saw year-over-year increases of around 20% from 2021 to 2022.

Construction Costs

Construction costs have continued to increase and represent a major nongovernmental constraint on the supply of housing at all income levels in the City of San José. According to recent interviews with developers of both market-rate and affordable units in the City, construction costs rose 10-12% from 2021 to 2022, due to increases in both labor costs and materials, such as lumber. Labor costs were already a significant contributor to construction costs prior to the pandemic and have continued to increase. The ongoing challenges in global supply chain have further exacerbated material costs.

The City has been conducting regular analyses of the cost of multifamily residential development and has issued two reports to date working with a consultant. A third update is being developed in 2022 by the City's consultant, Century Urban. This latter analysis uses a variety of prototypical developments in submarkets across the City with different building types, and resulting data on construction costs are summarized in *Table 4-1*. The table also shows the costs to build a typical single-family home; this data was also developed by Century Urban.

San José is at a unique disadvantage compared to other nearby cities. Rents remain high in San José, but are still lower than rents in some nearby cities. However, the City is still subject to the same construction costs as those jurisdictions. For market-rate development, this has been a major setback to production of new units in recent years. New market rate development has also been limited to specific areas where rent levels are sufficient to support new development and has resulted in uneven development patterns across the City. Increased construction costs are also a constraint on the production of affordable housing by increasing the size of the subsidy that must be provided by the city, county, or state.

Table 4-1: Residential Construction Costs in San José (2022)

MULTIFAMILY CONSTRUCTION *	AVERAGE UNIT SIZE (SF)	TOTAL HARD COSTS PER UNIT	TOTAL SOFT COSTS PER UNIT	TOTAL PER SF	TOTAL COST PER UNIT **
Type I / Rental – Downtown	900	\$688,800	\$171,900	\$956	\$860,800
Type I / For Sale – Downtown	950	\$797,400	\$191,700	\$1,041	\$989,100
Type III / Rental – Central	900	\$662,100	\$216,300	\$932	\$838,400
Type III / Rental – West	900	\$662,100	\$213,500	\$928	\$835,600
Type III / Rental – North	900	\$662,100	\$186,800	\$899	\$808,900
Type V / Rental – Central	900	\$552,900	\$199,900	\$836	\$752,700
Type V / Rental – South & East	900	\$552,900	\$179,300	\$813	\$732,100
Type V / For Sale – South & East	1,150	\$737,900	\$233,500	\$845	\$971,400
Type V / For Sale – Central, West & North	1,150	\$737,900	\$228,600	\$840	\$966,500

* Type I is 22-story high-rise building; Type III is 7-story mid-rise building; Type V is 5-story low-rise building.
** Total Cost Per Unit includes hard and soft costs, parking, city fees, permits, and financing costs.
Location Map: <https://csj.maps.arcgis.com/apps/webappviewer/index.html?id=8518bc095ae54f4ea025d7743c650881>

SOURCE: Century Urban, prepared for City of San José 2022 Report on the Cost of Development.

SINGLE-FAMILY CONSTRUCTION	AVERAGE UNIT SIZE (SF)	TOTAL HARD COSTS PER UNIT	TOTAL SOFT COSTS PER UNIT	TOTAL PER SF	TOTAL COST PER UNIT
Single-Family - Small	2,600	\$1,092,000	\$365,000	\$560	\$1,457,000
Single-Family - Large	5,000	\$2,625,000	\$775,000	\$680	\$3,400,000

SOURCE: Century Urban, prepared for Bard + Driskell for County Collaborative Group, 2022.

Construction costs have been the most significant constraint on the supply of housing.

4.3 Governmental Constraints

Governmental policies and regulations can result in both positive and negative effects on the availability and affordability of housing. This section, as required by Government Code Section 65583(a)(5), describes City policies and regulations that could potentially constrain the City's ability to achieve its housing goals. Potential constraints to housing include land use controls (through General Plan policies and zoning regulations), development standards, infrastructure requirements, development fees, and the development approval processes. While government policies and regulations are intended to serve public objectives and further the public good, the City of San José recognizes that its actions can potentially constrain the availability and affordability of housing to meet the community's future needs. To that end, the City has implemented several measures to reduce development costs and streamline the approval process, as described in this section.

4.3.1 General Plan

In November 2011, following significant community engagement, the City Council adopted the [Envision San José 2040 General Plan](#), the blueprint for the city's growth and development through 2040. The General Plan centers on 12 Major Strategies that reflect the community's desire to see San José grow as a prominent city in the region, state and country. For future land use, the plan focuses growth into existing infill areas along transit, thus limiting sprawl while creating new, vibrant urban villages that provide enough homes for all ages and income levels (see also the urban villages section that follows.)

The General Plan influences housing in the City primarily through land use designations and the Land Use Map, which control where new homes can be built and at what density. Of the plan's 23 land use designations, 11 allow for residential development, as listed in *Table 4-2*.

Table 4-2: General Plan Land Use Designations that Allow Residential Development

GENERAL PLAN LAND USE DESIGNATION	MAXIMUM ALLOWED DENSITY (dwelling units per acre)	CONFORMING ZONE(S)
Agriculture	0.05	A
Open Hillside	0.05	OS
Lower Hillside	0.2	R-1-RR
Rural Residential	2	R-1-1, R-1-2
Residential Neighborhood	8	R-1-8, R-1-5
Mixed Use Neighborhood	30	MUN
Mixed Use Commercial	50	MUC
Transit Residential	50-250	TR
Urban Residential	30-95	UR
Urban Village	250	UV
Downtown	350	DC

SOURCE: City of San José Planning Division, 2022.

The General Plan also contains Housing and Implementation Policies that outline the City's goals for new homes and execute the plan's vision for the City. Of note are:

- Housing Policy H-2.9, which allows certain 100% affordable housing projects to be built outside of existing Growth Areas on small, underutilized infill lots; and
- Implementation Policies IP-5.10 and IP-5.12, which allow market rate and affordable housing to be built in unplanned Urban villages, respectively.

Urban Village Strategy

The development of urban villages is the fifth of 12 Major Strategies embodied within the Envision San José 2040 General Plan. The urban villages concept is a policy framework to direct most new job and housing growth to occur within walkable and bike-friendly urban villages that have good access to transit and other existing infrastructure and facilities. The urban village strategy fosters:

- Revitalization of underutilized properties;
- Densities that support transit use, bicycling, and walking; and
- Mixed residential and employment uses that are attractive to an innovative workforce.

City staff have engaged the community on the preparation of comprehensive land use plans for 14 urban village areas thus far and envision working on an additional 46 such plans (60 in total). These plans include minimum and maximum densities for each site, design guidelines and development standards, and goals and policies specific to each village. Urban village areas are shown on the General Plan's [Planned Growth Areas Diagram](#).

Prior to the adoption of urban village plans, most sites in these areas have a commercial land use designation (NCC or MUC) which outright does not allow for residential uses. However, to address the housing crisis and provide flexibility, the City may allow residential uses to proceed ahead of an adopted urban village plan through two implementation policies:

- IP-5.10 - Allows market rate projects that conform to the General Plan's signature project requirements. A signature project serves as a catalyst, promoting the future development of the entire urban village area.
- IP-5.12 - Allows 100 percent affordable projects (at 80% AMI or below) to be built on these commercially-designated sites.

4.3.2 Zoning Districts

Zoning has the most immediate impact on enabling the construction of new housing. The City's zoning and development regulations establish the uses permitted within each zone and the standards that dictate how much development can occur on a given parcel of land, including maximum densities, height, setback, and lot coverage.

Title 20 of the San José Municipal Code (www.sanjoseca.gov/MunicipalCode), is commonly referred to as the Zoning Ordinance or Zoning Code. It guides, controls, and regulates future growth and development in the City while promoting the goals and policies of the General Plan. San José has a variety of zoning districts that can accommodate various housing needs. These districts are organized by chapter in the Zoning Code.

Zoning has the most immediate impact on enabling the construction of new housing.

To ensure no individual or group is excluded from a variety of housing, the Zoning Ordinance defines a family as being “one or more persons occupying a premise and living as a single housekeeping unit.” This definition is sufficiently broad and therefore does not constrain development of unique housing types, such as those for special needs populations or for unrelated persons in any zoning district where residential uses are permitted.

Agricultural and Open Space Districts

Chapter 20.20 focuses primarily on open space and agricultural uses but both districts support single-family use with a conditional use permit and temporary farm labor housing is similarly allowed but only in the Agricultural District. Single-family homes in either district may also be used for a residential care facility or residential service facility for six or fewer residents.

San José has a limited inventory of lands zoned for open space and agricultural use which limit the viability of these districts for housing uses, however, other zoning districts also support single-family and temporary farm labor housing as discussed in later sections that make up for this limitation.

Residential Districts

Chapter 20.30, commonly referred to as the Residential Zoning chapter, establishes residential land use and development standards. Standards include parameters for the size of lots/buildings and the location/use of structures in accordance with the City’s conventional, i.e., non-planned development, zoning districts. See *Table 4-3*.

The City’s Multifamily Residential (R-M) District has typical setback requirements, but it has no density limit and includes building height exceptions. R-M can accommodate development of higher density, lower-income housing, i.e., at least 30 units per acre, without the need for a Planned Development (PD) zoning/permit.¹ The R-M district, however, is a legacy zoning district, which means that in most cases it would not be an appropriate district for rezoning for multifamily uses, which limits the utility of this designation. In response, the City adopted six new zoning districts that will help create a more vibrant urban form in areas that are targeted for mixed-use development and high-density residential uses, further described in the section on Urban Village and Mixed-Use districts.

¹ CA CODE § 65583.2(c)(3)(B)(iv)

HOW ZONING DISTRICTS ALLOW FOR VARIOUS HOUSING NEEDS

Municipal Code Chapter 20 is considered the Zoning Code

www.sanjoseca.gov/MunicipalCode

Chapter 20.20 Open Space & Agricultural Districts - Housing uses include single-family and temporary farm labor camps necessary to the gathering of crops grown on site.

Chapter 20.30 Residential Districts - Housing uses include single-family, two-family (duplex), and multifamily.

Chapter 20.40 Commercial and Public/Quasi-Public Districts - Housing uses include supportive services like low barrier navigation centers and mixed-use residential/commercial.

Chapter 20.50 Industrial Districts - Housing uses include hotel supportive housing.

Chapter 20.55 Urban Village and Mixed-Use Districts - Housing uses include single-family, two-family (duplex), multiple dwelling, and mixed-use development.

Chapter 20.70 Downtown Zoning Regulations - Housing uses include multiple dwelling and mixed-use development.

Chapter 20.75 Pedestrian Oriented Districts - Housing uses include mixed-use residential and supportive services like low barrier navigation centers.

Table 4-3: Development Standards for Residential Zoning Districts

ZONING DISTRICT	UNITS PER LOT	MIN. LOT AREA (SF)	MAX. ADU	MAX. JUNIOR ADU	MAX. HEIGHT (FT)	PRIMARY DWELLING SETBACKS				
						FRONT	REAR INTERIOR	REAR CORNER	SIDE INTERIOR	SIDE CORNER
R-1-1	1	1 acre	1	1	35	30	25	25	20	20
R-1-2	1	20,000	1	1	35	30	25	25	15	15
R-1-5	1	8,000	1	1	35	20	20	20	5	12.5
R-1-8	1	5,445	1	1	35	20	20	20	5	12.5
R-1-RR	1	5 acre	1	1	35	50	30	30	20	30
R-2	1-2	5,445	3	-	35	15	25	25	5	10
R-M *	1+	6,000	25% **	-	45	10	25	15	5	7.5
R-MH	-	6,000	-	-	45	15	25	15	5	7.5

* For additional building height regulations for R-M, see Zoning Code Chapter 20.85, specific height restrictions.
** The Max ADU percentage is the total number of ADUs allowed equal to the percentage of realized/existing units.
- If located in approved urban village area, refer to the urban village plan for height regulations.

SOURCE: City of San José Planning Division, 2022.

As required by state law, permanent supportive housing is a by-right use in the following districts: Mixed-Use Commercial, Mixed-Use Neighborhood, Multifamily Residential, Public/Quasi-Public, Transit Residential, Urban Residential, and Urban Village. Permanent supportive housing provides focused assistance programs that promote long-term housing retention.² Residential care and service facilities are also a by right use in all residential districts for six or fewer persons or conditionally permitted for seven or more persons in those districts named above and also in the Commercial districts.

Incidental use allows for the rental of rooms in each of the following residential zoning categories: Single-family properties can rent rooms up to three guests, two-family (duplex) properties can rent rooms up to two guests by each family, and multifamily properties can rent rooms up to two guests per unit. Rental of rooms must be for a period longer than thirty days and there can be no more than six persons living in a dwelling. Other incidental uses include state-licensed family day care homes and transient occupancy for a period of 30 days or less.³

A Single-Family House Permit may be required for single-family homes in limited circumstances, including new construction that exceeds 30 feet or 2 stories in height; a floor area ratio (FAR) more than 0.45; or a house or site that is designated as historic. This permit requires a public hearing under certain circumstances and can be a limiting factor on single-family zoned lots. This permit is not required, however, when an applicant applies for a project under Senate Bill 9 or is adding an accessory dwelling unit (ADU) to an existing single-family house.

Impact of Senate Bill 9 on Residential Districts. In addition to the common uses of the Residential Districts, SB 9 was recently adopted into law as a method for densifying single-family neighborhoods.

² CA CODE § 65582(g)

³ SAN JOSE MUNICIPAL CODE Ch. 20 § 20.30.110

Signed by Governor Gavin Newsom on September 16, 2021, SB 9 allows lots in the R-1 Single-Family District to be subdivided; enables ministerial approval of two units per lot with or without subdivision and may further allow ADUs; and prohibits development standards that would preclude dwellings from being less than 800 square feet on any lot.⁴ More specifically:

- For lots not involving an SB 9 subdivision, an existing single-family home may be remodeled as a duplex or demolished and rebuilt as a duplex. After construction of the duplex, and as allowed by setback requirements, the owner may add up to two ADUs for a total of no more than four units on the property.
- For lots created by an SB 9 subdivision, no more than two units (including ADUs) may be built on each of the lots resulting from the subdivision.
- For lots that already contain a duplex or multifamily residence, these are not eligible to use the provisions of SB 9, but they may add ADUs.

Commercial/Public/Quasi-Public and Industrial Districts

Residential uses, when allowed in Commercial/Public/Quasi-Public Districts and Industrial Districts, are most often conditionally permitted, see *Table 4-4*. Low barrier navigation centers are by right uses in all but the Commercial Office (CO) District. Permanent supportive housing is a by right use in the Public/Quasi-Public District. Hotel supportive housing is conditionally allowed in all Commercial/Public/Quasi-Public and Industrial Zoning districts.

The Commercial General (CG), Commercial Neighborhood (CN), and Commercial Pedestrian (CP) districts support mixed-use residential/commercial with a conditional or special use permit on parcels that have a General Plan land use designation that supports residential or mixed-uses. In the CP District, a special use permit is required if the site is in an urban village. City staff are proposing to modify the permit type from conditional/special use to a site development permit in late 2022. A significant portion of these districts fall within urban village areas as shown on the General Plan's Land Use/Transportation Diagram. This means many sites with these zoning districts are subject to two things: First is the urban village plan, if applicable, which often creates higher densities and expanded uses than normally allowed for properties on commercial lots. Second is many of the commercial districts within urban village areas, either already approved or planned, will be rezoned to align with their respective land use designation in the General Plan, as required by state law;⁵ see discussion of the City's rezoning project in the section on Urban Village and Mixed-Use Districts.

Downtown Districts

The Downtown Commercial (DC) and Downtown Neighborhood Transition (DC-NT1) districts allow various residential uses where the General Plan allows residential uses to occur, see *Table 4-4*. The DC District is the least restrictive for intensified residential development in the City; there are no minimum setbacks required and maximum allowable building height is limited only by Federal Aviation Administration (FAA) regulations.

4 CA CODE § 66452.6, 65852.21, 66411.7. Accessed March 2022: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB9

5 CA CODE § 65860. Accessed March 2022: https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=65860

Table 4-4: Types of Housing Permitted in Zoning Districts

PERMIT PROCESS: Not Permitted (-); Permitted by Right (P); Conditional Use Permit (C);
Special Use Permit (S); Conforms with General Plan (GP)

RESIDENTIAL DISTRICTS	APPLICABLE PERMIT PROCESS				
	R-1	R-2	R-M	R-MH	—
Accessory Dwelling Unit (ADU)	P	P	P	-	
Guesthouse	-	-	P	-	
Living Quarters, Custodian, Caretakers	-	-	-	C	
Mixed-Use Residential/Commercial	-	-	S	-	
Mobilehome Parks	-	-	-	P	
Multiple Dwelling	-	-	P	-	
One-Family	P	P	-	C	
One-Family Dwelling (Single-Family)	P	P	P	C	
Permanent Supportive Housing	-	-	P	-	
Residential Care Facility, Seven or More Persons	-	-	C	C	
Residential Care Facility, Six or Fewer Persons	P	P	P	P	
Residential Service Facility, Seven or More Persons	-	-	C	C	
Residential Service Facility, Six or Fewer Persons	P	P	P	P	
Single Room Occupancy Living Unit Facility	-	-	C	-	
Sororities, Fraternities, Dormitories for Educational Institutions	-	-	C	-	
Travel Trailer Parks	-	-	-	C	
Two-Family Dwelling (Duplex)	-	P	P	-	
COMMERCIAL & PUBLIC/QUASI-PUBLIC DISTRICTS	CO	CP	CN	CG	PQP
Emergency Residential Shelter	S	S	S	S	S
Hotel Supportive Housing	C	C	C	C	C
Live/Work Uses	-	S	S	S	-
Low Barrier Navigation Center	-	P	P	P	P
Mixed-Use Residential/Commercial	-	C/S	C	C GP	-
Permanent Supportive Housing	-	-	-	-	P
Residential Care Facility, Seven or More Persons	C	C	C	C	C
Residential Care Facility, Six or Fewer Persons	-	-	-	-	-
Residential Service Facility, Seven or More Persons	C	C	C	C	C
Single Room Occupancy Residential Hotel	-	C	C	C	-
Single Room Occupancy, Living Unit	-	C	C	C	-
INDUSTRIAL DISTRICTS	CIC	HI	IP	LI	TEC
Hotel Supportive Housing	-	C	C	C	C
Emergency Residential Shelter, More Than 50 Beds	C	-	-	-	-
Emergency Residential Shelter, Up to 50 Beds	P	-	-	-	-

Table Continues >

CONTINUED - Table 4-4: Housing Types Within Various Zoning Districts

PERMIT PROCESS: Not Permitted (-); Permitted by Right (P); Conditional Use Permit (C);
Special Use Permit (S); Conforms with General Plan (GP)

URBAN VILLAGE & MIXED-USE DISTRICTS	APPLICABLE PERMIT PROCESS					
	UVC	UV	MUC	MUN	UR	TR
Accessory Dwelling Unit (ADU)	-	P	P	P	P	P
Co-Living Community	-	S	C	C	S	S
Emergency Residential Shelter	-	S	S	S	S	S
Guesthouse		S	-	S	S	S
Hotel Supportive Housing	C	-	C	-	-	-
Live/Work Uses	-	S	S	S	S	S
Low Barrier Navigation Center	-	P	P	P	P	P
Mixed-Use Development	-	P	P	P	P	P
Multiple Dwelling	-	P	P	P	P	P
One-Family	-	-	-	P	P	P
One-Family Dwelling (Single-Family)	-	-	-	P	P	P
Permanent Supportive Housing	-	P	P	P	P	P
Residential Care Facility, Seven or More Persons	-	C	C	C	C	C
Residential Care Facility, Six or Fewer Persons	-	P	P	P	P	P
Residential Service Facility, Seven or More Persons	-	C	C	C	C	C
Residential Service Facility, Six or Fewer Persons	-	P	P	P	P	P
Single Room Occupancy Living Unit Facility	-	-	C	-	-	-
Single Room Occupancy Residential Hotel	C	C	C	C	C	C
Two-Family Dwelling (Duplex)	-	-	-	P	P	P
DOWNTOWN DISTRICTS	DC	DC-NT1				
Co-Living Community	S	S				
Emergency Residential Shelter	C GP	-				
Hotel Supportive Housing	C GP	C GP				
Live/Work Uses	P GP	S GP				
Low Barrier Navigation Center	P GP	P GP				
Multiple Dwelling	P GP	P GP				
Permanent Supportive Housing	P GP	P GP				
Residential Care Facility, Seven or More Persons	C GP	C GP				
Residential Service Facility, Seven or More Persons	C GP	C GP				
Single Room Occupancy Living Unit Facility	S GP	S GP				
Single Room Occupancy Residential Hotel	S	S				

SOURCE: City of San José Planning Division, 2022.

Urban Village and Mixed-Use Zoning Districts

As a charter city, the City of San José has not historically been required to have zoning districts and the land use designations of the General Plan aligned. Where they have differed, the land use designations take precedence. The passage of Senate Bill 1333 in 2018 became the impetus for all charter cities to match their zoning districts and land use designations. As part of the effort, staff developed six new zoning districts, adopted by the City Council on May 25, 2021: Urban Village Commercial (UVC), Urban Village (UV), Mixed-Use Commercial (MUC), Mixed-Use Neighborhood (MUN), Urban Residential (UR), and Transit Residential (TR). These districts permit various types of housing as seen in *Table 4-4*. These zoning districts will be located typically within urban village areas as shown on the General Plan Land Use/Transportation Diagram, which emphasize walkable, bike-friendly, and transit-served communities, and will support the General Plan's Major Strategy #5, which aims to intensify job and housing growth. The alignment work includes the rezoning of properties and is currently underway. This work is expected to be a two- to three-year process.

4.3.3. Other Land Use Controls

Secondary Unit Policies

Secondary units provide an important potential source of affordable housing. In 1982, state law was enacted to encourage the creation of secondary units while maintaining local flexibility for unique conditions, which included the ability to set development standards, require minimum unit sizes, and establish parking requirements.⁶ It wasn't until 2005, however, that the San José City Council initiated a Secondary Unit Pilot Program to temporarily test and evaluate a set of secondary unit development standards for a period of one year — citing traffic, infrastructure, and safety concerns up to this point as major reasons it took this long to explore as an option. San José later adopted an ordinance in 2008 which permanently allowed secondary units that conform to modified

TERMS

ADU - Accessory dwelling units (ADUs) are secondary units, also known as granny flats or backyard homes. May be attached or detached from the main home, or a conversion of a basement or garage.

JADU - A junior accessory dwelling unit (JADU) is built within the footprint of the main home.

THOW - A type of ADU that is mounted on a wheeled trailer chassis.



This ABODU ADU is one of many preapproved units that can go through the permit review process easily and quickly. Learn more at www.sanjoseca.gov/ADUs.

⁶ CA CODE § 65852.2

Zoning Code requirements based on the outcome of the trial period. From 2008 to 2014, the newly allowed secondary-unit provision of the Code resulted in the construction of 150 secondary units — a less than meaningful impact on the supply of affordable housing.

In 2019 the state passed Senate Bill 13, Assembly Bill 68, and Assembly Bill 881, all of which largely eased the construction of secondary units — now broadly known as accessory dwelling units or ADUs. These bills expanded what homeowners could do with respect to their property by right for both an ADU and a Junior ADU (JADU). In November of 2019, San José adopted Ordinance No. 30336 to align with the new state regulations on ADUs and JADUs. Then the City amended this section in 2020 with Ordinance No. 30353 in response to AB 3182, which required ministerial approval of ADUs, among other things. San José expanded on the section of the Zoning Code regarding ADUs on April 14, 2020 by adding Tiny Home on Wheels (THOWs) as a third dwelling option. THOWs are perceived as an affordable housing alternative to tackle the housing crisis because they are a smaller portable unit intended as a permanent housing option with substantially lowered costs of construction, installation, and maintenance.

The primary distinction between a THOW and a RV is that although a THOW is mounted on a wheeled trailer chassis, it is built to look like a residential dwelling, using conventional building materials and is thereby architecturally distinct from traditional mobile homes and recreational vehicles (see inset).

CHARACTERISTICS OF A TINY HOME ON WHEELS (THOW)

1. Designed as a separate, independent living quarters that is no larger than 400 square feet.
2. Required functional areas that support normal daily routines, including a bathroom, a kitchen, and a sleeping area.
3. Registered and titled to tow legally under the California Department of Motor Vehicles (DMV).
4. Required compliance with American National Standards Institute (ANSI) 119.5 or National Fire Protection Association (NFPA) 1192.
5. Allowed as a type of ADU.
6. Required to meet zoning regulations, including development standards.
7. Required to obtain and establish electric, water and sewer connections.

Between 2014 and 2018, there were approximately 301 permits issued and 260 secondary units built. After implementation of the state legislation and local ordinances discussed above, from 2019 to June 2022, the number of permits issued for ADUs (including THOWs) skyrocketed to 1,245 with 963 of these built. Most ADU sizes fall within the 501 to 700 square foot range.



Interior of a THOW. Photo credit: www.tinyhomesbayarea.com

The success of this program is largely because of the state laws that eased parking requirements and eliminated parkland and school impact fees for ADUs under 750 square feet, but also because of other factors:

- Housing Trust Silicon Valley offered free educational workshops as well as financial assistance to Bay Area homeowners interested in an ADU.
- The City of San José made it a priority to promote ADUs and was first to establish a Preapproved ADU process, which reduces permitting costs by enabling ADU vendors to obtain approval of master plans that can be offered to their customers.
- The City also added a dedicated staff position, the ADU Ally, to be a point of contact for helping homeowners and builders through the City's permit process. The ADU Ally also participates in educational webinars sponsored by the City and housing organizations.

Parking Standards

The Zoning Code contains provisions for off-street parking and loading.⁷ These requirements are intended to promote adequate parking to meet the needs generated by a specific use or uses and to promote effective circulation, reduce congestion, increase safety and aesthetics within off-street parking areas, and encourage the use of alternative modes of transportation, among other trip reduction methods. For single-family dwellings, two covered parking spaces are generally required. For two-family (duplex) and multifamily units, required parking may be uncovered and the number of required parking spaces is derived from the living unit size (i.e., number of bedrooms) and the type of parking facility, as indicated in *Table 4-5*. However, parking requirements are less in the Downtown Districts and for sites that meet certain other location criteria (e.g., within 2,000 feet of a light rail transit station, within an urban village, or within a neighborhood business district).

A reduction of parking requirements may be appropriate provided that the modification is granted pursuant to applicable Zoning Code provisions.⁸ Qualifying projects must incorporate Transportation Demand Management (TDM) program elements, such as transit pass subsidies, parking cash-out, ride sharing, carpools/vanpools, shared parking, or other reasonable measures. Parking reductions are especially applicable to senior housing, single room occupancy (SRO) facilities, emergency residential shelters, residential care/service facilities, and convalescent hospitals, to name a few.

Given the complex requirements for various other residential uses besides single-family, two-family, and multifamily dwellings, *Table 4-6* is provided to help outline these requirements as found on separate tables in Chapter 20.90 of the Zoning Code, titled Parking and Loading, and Chapter 20.70, titled Downtown Zoning Regulations.

⁷ SAN JOSE MUNICIPAL CODE Ch. 20 § 20.90

⁸ SAN JOSE MUNICIPAL CODE Ch. 20 § 20.90.100; 20.90.220; 20.90.240; 20.90.250

In recent years, San José has committed to climate initiatives such as the International Paris Agreement, which is furthered through Climate Smart San José and codified in the Envision San José 2040 General Plan. As part of an ongoing effort to meet climate goals, the City Council directed a comprehensive modernization of parking standards, which have not undergone such review since 1965. At present, parking requirements are based on an outdated system of land use types and scale of activity and are not consistent with the community goals in these plans, such as reducing greenhouse gas emissions and traffic congestion, housing affordability, and designing more attractive and walkable neighborhoods.

Reforming the City's parking standards by removing mandatory minimums and implementing further TDM strategies will help meet increasing transportation demand while also supporting the goals of these plans. The proposed amendments to the parking requirement in the zoning code and the proposed TDM program are anticipated to go Council for its consideration in the Fall of 2022.

Table 4-5: Residential Parking Requirements By Bedroom Size

TF = TWO-FAMILY MF = MULTIFAMILY	OPEN PARKING	ONE-CAR GARAGE	TWO-CAR GARAGE
NUMBER OF BEDROOMS	(TF / MF)*	(TF / MF)*	(TF / MF)*
0 Bedroom (Studio)	1.5 / 1.25	1.5 / 1.6	2.0 / 2.2
1 Bedroom	1.5 / 1.25	2.0 / 1.7	2.0 / 2.3
2 Bedroom	2.0 / 1.7	2.0 / 2.0	2.0 / 2.5
3 Bedroom	2.0 / 2.0	2.0 / 2.2	2.0 / 2.6
Each Additional Bedroom	0.25 / 0.15	0.25 / 0.15	0.25 / 0.15
Note: Any unit using tandem parking shall have a parking requirement of 2.0.			

SOURCE: City of San José Planning Division, 2022.

Table 4-6: Residential Parking Requirements by Land Use Type

TYPE OF RESIDENTIAL LAND USE	CAR PARKING REQUIREMENTS
Co-Living community with shared full kitchen	0.25 per Bedroom
Emergency residential shelter	1 per 4 beds and 1 per 250 sq. ft. of area that is used as office space. May have up to a 100% reduction in required off-street parking with a development permit or exception if no development permit is required.
Guesthouse	1 per guest room, plus 1 per employee
Live/work	No additional parking required above what is required for commercial use parking
Each Additional Bedroom	0.25 / 0.15
Living quarters, custodian, caretakers	1 per living unit
Mixed use/ground floor commercial with residential above	Respective commercial and residential parking requirements combined
Multiple dwelling	See Residential Parking Requirements By Bedroom Size5-5
One family dwelling	2 covered
Residential care or service facility	1 per first 6 client beds, plus 1 additional space for up to 4 client beds (or portion thereof) above the first six, plus 1 additional space for each additional four client beds (or portion thereof), plus 1 space for each employee or staff member.
SRO facilities within 2,000 ft. of public transportation	—
SRO residential hotels	0.25 per SRO unit
SRO living unit facilities with shared kitchen and bathroom facilities	0.25 per SRO unit
SRO living unit facilities with partial or full kitchen and bathroom facilities	1 per SRO unit
SRO facilities not within 2,000 ft. of public transportation	1 per SRO unit
Sororities, fraternities, and dormitories occupied exclusively (except for administrators thereof) by students attending college or other educational institutions	1 per guest room, plus 1 per employee
Temporary farm labor camp necessary to the gathering of crops grown on the site	1 per dwelling unit
Travel trailer parks	1 per employee
Two-family dwelling (duplex)	See Table 20-200, required parking is determined by the type of parking facility and the number of bedrooms

SOURCE: City of San José Planning Division, 2022.

Design Guidelines

The City of San José has adopted design guidelines to assist in the design, construction, review, and approval of residential development. By defining criteria for new residential development occurring within the City, the design guidelines benefit the development community by providing more clarity and reducing the soft costs of producing housing. Developers can incorporate standards from the guidelines into a project during the early stages of design rather than having to revise plans significantly during later stages of the review process.

The Downtown Design Guidelines and Standards were updated and effectuated in April of 2019. They replace the 2004 Guidelines and provide information on site planning, access and design, form, and building design, appearance in the larger cityscape, and building interface at the pedestrian level. These guidelines define design objectives for elements that determine the image of the general area of Downtown, translating them into an operational document, which increases predictability for various stakeholders and results in reduction of overall permitting costs.

The Citywide Design Standards and Guidelines were effectuated in March of 2021. They apply to the portions of San José within the Urban Growth boundary, excluding single-family residences and the rehabilitation, modifications, or addition to historic buildings or their adaptive reuse. These guidelines do not apply in Downtown San José and the Diridon Station Area, where the Downtown Design Guidelines and Standards instead apply.

The Downtown Guidelines apply to the General Plan Downtown Growth Area and the Diridon Station Area Plan Area, which is bounded in the south by Highway 280, on the north by Coleman Avenue, on the west by Diridon Station, and on the east by San José State University. While the San José State University (SJSU) campus is not within the boundary of the Downtown Growth Area, SJSU contributes significantly to the vitality of Downtown and is part of its larger context. Therefore, SJSU is included within the proposed Downtown Design Guidelines boundary.

Combined, the above design guidelines provide a common understanding of the minimum design standards to be applied to various land uses, development types, and locations to facilitate efficient design. Design quality focuses on the functional aspects of development (e.g., buildings, parking, setbacks, etc.) rather than requirements of expensive materials. Design guideline standards are objective requirements that are quantifiable and verifiable. Guidelines describe best practices and serve as overarching design guidance.

Affordable and market rate housing are subject to the design guidelines, resulting in high quality affordable housing acceptable to neighborhoods throughout the city without unduly constraining housing development in San José.

Any projects in urban villages, areas with Specific Plans, or areas with development policies, such as North San José, are subject to the standards and guidelines within their respective applicable documents. Should a specific document be present but silent on a particular design standard, then the Citywide Guidelines and Standards apply.

Resources to Alleviate Constraints Relating to Design Guidelines. The development standards used in the design guidelines are intended to allow residential projects to achieve the maximum densities permitted by General Plan residential land use designations. The setback and landscaping requirements are not excessive and do not require inordinate development expenditures, and they contribute to a quality

living environment. Affordable and market rate housing are subject to the design guidelines, resulting in high quality affordable housing acceptable to neighborhoods without unduly constraining housing development. The Downtown Design Guidelines and Standards and Citywide Design Standards and Guidelines also include an exception process; see the Objective and Subjective Standards section for more details.

Building Codes

The State Building Standards Commission (BSC) publishes triennial editions of the California Code of Regulations (CCR), Title 24, also known as the California Building Standards Code. Most recently, on July 1, 2019, the BSC published the 2019 edition of these standards, which apply to any building or structure for which application for a building permit is made on or after January 1, 2020. The State allows local governments to modify the standards to make them more restrictive (not less), provided findings are made that the proposed modifications are necessary due to local geologic, topographic, or climatic conditions that can affect the health, welfare, and safety of local residents. Any local amendments must be made prior to the effective date of the State codes.

On November 5, 2019, the City Council approved an ordinance amending Title 24 of the San José Municipal Code and adopting the 2019 editions of the California Building, Residential, Electrical, Mechanical, and Plumbing Codes, the California Historical Building Code, the California Existing Building Code, the California Green Building Standards (CALGreen) Code, and the California Building Energy Efficiency Standards. This ordinance included a staff proposal to adopt local amendments for certain structural design requirements, fire sprinkler regulations, and other building requirements based on the following findings:

1. The San Francisco Bay Area region is densely populated and located in an area of high seismic activity. San José is bounded by the Hayward and San Andreas faults capable of producing major earthquakes.
2. Concern for fire/life safety associated with a structural failure due to a seismic event, considering the increasing number of buildings in the region, the use of new structural systems, the poor performance of certain materials, and the quality of construction.
3. Severe seismic events could disrupt communications, damage gas mains, cause extensive electrical hazards, and place extreme demands on limited and widely dispersed fire prevention resources to meet the fire and life safety needs of the community.
4. The local geologic, topographic, or climatic conditions pose an increase hazard in acceleration, spread, magnitude, and severity of potential fires in San José, and may cause a delayed response from emergency responders, allowing further growth of the fire.

Reach Code Ordinance. In September 2019, San José City Council approved a building reach code ordinance that encourages energy efficiency and greenhouse gas reduction through building electrification; solar-readiness on nonresidential buildings; and electric vehicle (EV)-readiness and EV equipment installation.

In October 2019, the City Council approved an ordinance prohibiting natural gas infrastructure in new detached accessory dwelling units, single-family, and low-rise multifamily buildings that would supplement the reach code ordinance. On December 1, 2020, Council approved an updated ordinance prohibiting natural gas infrastructure in all new construction in San José, starting on August 1, 2021.

Resources to Alleviate Constraints Relating to Building Codes. The City of San José is in the forefront of identifying the need for building code amendments. The City assumes a leadership role at the regional and state levels to reduce individual differences between cities and counties, and informs and educates the public about new requirements. To establish uniformity in adopting code amendments, the City is an active participant in the Tri-Chapter Uniform Code Program, whose greater Bay Area membership stretches from Contra Costa County in the north to San Benito County in the south. City staff conducted free training sessions in early 2020 to introduce various stakeholders to the significant changes between the 2016 and 2019 California Building Codes as well as the local amendments. Such sessions are anticipated in early 2023 to highlight the changes between the 2019 and 2022 California Building Codes.

The 2019 Building Codes and amendments do not unduly constrain residential development or the City's ability to accommodate special housing needs groups in San José, including persons with disabilities. In fact, the codes and amendments contain design elements that address limited lifting or flexibility (e.g., roll-in showers, grab bars, etc.), limited mobility (e.g., push/pull lever faucets, wide swing hinges, etc.), and limited vision (e.g., additional stairwell and task lighting, etc.) that are consistent with the Americans with Disabilities Act (ADA) standards, as implemented under Title 24.

On-Site and Off-Site Improvements

New residential development in San José may be responsible for both on-site (private) and off-site (public) improvements that are directly related to the impacts associated with a particular development project:

- On-site improvements may include such items as public roads, private driveways and walkways, fencing, landscaping, grading and drainage, stormwater treatment facilities, etc. These improvements are either required by the Zoning Code or negotiated through the development review process as conditions of approval.
- Off-site improvements may include standard curbs, gutters, sidewalks, landscaping, street lighting, and the installation of underground utilities (including the undergrounding of existing overhead utilities). Depending on the extent of project impacts, such public improvements may be required not only for the subject property but also for areas not located on the development site (e.g., a traffic signal to address operational impacts to the intersection).

The City's design guideline documents (<https://bit.ly/SJ-DesignGuidelines>) illustrate site improvement standards and requirements for the full range of housing types and for mixed-use development in different areas of the City. Although the costs of site improvements can vary based on the location, type, and scale of development, site improvements generally have greater impact on the cost of housing in areas where infrastructure (streets, sewers, curbs, gutters, utilities, bus stops, parks, etc.) is not in place or where the infrastructure exists but does not meet current standards and needs to be expanded, modified, or replaced. For example, site improvements are generally costlier in locations near the edge of the Urban Growth Boundary/Urban Service area than on an infill site in Downtown. Identification of specific improvements for a proposed development is often determined in conjunction with environmental analysis of the project.

The primary mechanism for funding public improvements is the Residential Construction Tax Contribution Fund. In essence, housing developers pay contributions to this fund and, in turn, reimbursements are made from the fund once eligible improvements are completed. Similarly, underground utility districts are established using fees from developers. Undergrounding projects are

prioritized within a five-year plan based on several criteria, the most important of which is the amount of fees collected within the underground district. Other criteria include whether or not the underground work can be coordinated with other capital improvement projects (e.g., street widening) and equity in the amount of undergrounding proposed in various areas of the City.

On-site and off-site improvements are not deemed an undue constraint as the City has well-established infrastructure standards that are communicated to developers at the earliest stages of the development review process, so that these costs can be appropriately factored into the design of a project.

4.3.4 Residential Developer Affordable Housing Requirements

Inclusionary Housing Ordinance

The Inclusionary Housing Ordinance (IHO), reflected in Chapter 5.08 of San José Municipal Code, was adopted in 2010. The IHO requires all residential developers that create new, additional, or modified for-sale or rental units to provide either 15% of housing on-site or 20% of housing off-site that is affordable to income-qualified buyers or renters. See *Table 4-7*.

Due to legal challenges, full implementation of the ordinance was stalled for both for-sale and rental housing. In 2014, the City adopted an impact fee program, the Affordable Housing Impact Fee (AHIF), that applied to new rental projects. In 2015, the California Legislature passed AB 1505 that restored the authority of the City to require inclusionary housing on new rental developments. Also in 2015, the California Supreme Court affirmed a district court ruling upholding the City's IHO that applied to new for-sale construction. In 2017, the City adopted changes to transition from the AHIF to the IHO for rental projects.

The City Council approved amendments to the Inclusionary Housing Ordinance in 2021 to encourage production of more affordable housing units on-site through the addition of the following four new compliance options:

1. Mixed compliance option (on-site rental with an adjusted in-lieu fee);
2. Option to purchase real property;
3. Option to dedicate SB 35 entitled property; and
4. Option for a partnership with clustered units.

All projects may choose to pay the in-lieu fee rather than construct units. As part of the 2021 update, the in-lieu fee was also restructured from a per-unit to a per-square-foot basis to allow for easier estimation and administration of the fee. The fee varies by location: Areas determined to be in strong market areas pay a higher fee than those determined to be in moderate markets. The initial fee was set at \$43 per square foot in strong market areas and at \$18.70 per square foot in moderate market areas with an annual increase tied to the index published by Engineering News-Record. The latest increase was 5.26% with the fee increasing to \$45.26 in strong market areas and \$19.68 in moderate market areas.

Additionally, projects can choose the mixed compliance option to provide a portion of units on-site and pay an adjusted in-lieu fee depending on the affordability of the units provided to satisfy the City's inclusionary housing ordinance. Units that satisfy state density bonus law are eligible to be counted towards the units required under the IHO. The fee amount, market areas, and new compliance options were added to encourage greater production of units and were added based on findings from feasibility analysis conducted by a consultant in 2019. The City plans to update this study regularly through updates to the Cost of Residential Development Study.

Table 4-7: Inclusionary Housing Ordinance Compliance Options

	OBLIGATION	FOR SALE	RENTAL
On-Site*	15%	Purchasers must be at or below 120% AMI	5% at 100% AMI 5% at 60% AMI 5% at 50% AMI OR 10% at 30% AMI
Off-Site*	20%	Purchasers must be at or below 110% AMI	5% at 80% AMI 5% at 60% AMI 10% at 50% AMI
In-Lieu Fee*	20% (applied to all units-based square foot)	\$25 per square foot applied to interior residential square foot	Per square footage which requires a change in methodology towards the entire building <i>Strong Market:</i> \$45.26/ft ² <i>Moderate Market:</i> \$19.68/ft ²
Mixed Compliance Option	20%	Not applicable	<i>Strong Market:</i> Pay 5% at 100% AMI plus pay in-lieu fee of \$19.68/ft ² in-lieu for all rentable areas <i>Moderate Market:</i> Pay 5% at 100% AMI plus pay in-lieu fee of \$12.49/ft ² in-lieu for all rentable areas
Dedication of Land	20%	Marketable title, general plan designation zoned for residential development and at a density required, and suitable for inclusionary units. Must comply with the requirements as listed in the Municipal Code 5.08.530.A.	
Credits and Transfers	20%	Developers may purchase or transfer credits for affordable housing units that are available for occupancy concurrently with market rate units. Must comply with the requirements as listed in the Municipal Code 5.08.540.C.	
Acquisition and Rehab of Units*	20%	Rehabilitate existing market rate units for conversion to units affordable to Lower and Very Low Income Households. Number of Rehabilitation units must be 2 to 1 of the base inclusionary obligation. Must comply with the requirements as listed in the Municipal Code 5.08.550.	
HUD Restricted Units*	20%	Developers may provide units that are restricted to Affordable Housing Cost for Lower or Very Low Income Households through entering into an agreement with the U.S. Department of Housing and Urban Development (HUD). Must comply with the requirements as listed in the Municipal Code 5.08.560.H.	
Combination of Methods	20%	Developers may propose any combination of methods to satisfy the project's inclusionary housing obligation. Must comply with the requirements as listed in the Municipal Code 5.08.570.	
Option to Purchase	20%	This compliance option allows developers to purchase a property and dedicate the entitled property to the City. Must comply with the requirements as listed in the Municipal Code 5.08.580.	
Partnership for Clustered Units	15%	If located on an immediately adjacent parcel and in close proximity to the market rate building, then subject to only the 15% requirement. Must have Low Income Housing Tax Credit Financing or other public financing that requires separation. Establish a minimum contribution from market rate developer to affordable developer equivalent of 75% of the required in-lieu fee obligation. Must comply with the requirements as listed in the Municipal Code 5.008.590.	

SOURCE: City of San José Planning Division, 2022.

Commercial Linkage Fee

Since November 1, 2020, the City has charged a Commercial Linkage Fee (CLF) on commercial development to fund affordable housing. The CLF was adopted after a Nexus Study was completed in July 2020 that establishes the linkage between new non-residential buildings, the jobs created through that development, and the demand for new affordable housing. Projects pay the fee based on gross square footage by each use. The fee amount varies based on location, use, and size. The CLF for Downtown and nearby areas is shown in *Table 4-8*.

Table 4-8: Commercial Linkage Fee

NON-RESIDENTIAL USE	FEE PER SQUARE FOOT
Office (≥ 100,000 sq.ft.)	\$12.63 when paid in full prior to issuance of building permit; OR \$15.79 when paid in full prior to scheduling of final inspection; OR \$15.79 paid over five installments secured by bond or letter for credit plus 3% annual interest that accrues from the scheduling of the final building inspection.
Office (<100,000 sq.ft.)	No Fee (\$0) for all square footage ≤50,000 sq.ft.; and \$3.16 for all remaining square footage
Retail	No fee (\$0)
Hotel	\$5.26 excluding Common Area
Industrial/Research and Development (≥100,000 sq.ft.)	\$2.53 paid in full prior to issuance of building permit; OR \$3.16 paid in full prior to scheduling of final inspection; OR \$3.16 paid over five installments secured by bond or letter of credit
Industrial/Research and Development (<100,000 sq.ft.)	No fee (\$0)
Warehouse	\$5.26
Residential Care	\$6.32 excluding Common Area

SOURCE: City of San José Planning Division, 2022

4.3.5 Affordable Housing Program

Density Bonus Ordinance

The California State Density Bonus Law was first enacted in 1979.⁹ This legislation was passed to address the State's lack of affordable housing and incentivize its development. The incentives for developers who have affordable housing units at certain percentages within their projects include allowing them to increase the density for their projects, among other development benefits. Over the years, the law has been modified to be more prescriptive about the granting of density bonuses and incentives.

Per state law, San José may grant a density bonus when an applicant requests a bonus and agrees to execute and record a Regulatory Agreement for the construction and maintenance of affordable rental

or ownership of housing units, senior citizen, foster youth, disabled veterans, homeless persons, or student housing development uses. Developers may be entitled to incentives and concessions even without requesting a density bonus.

The San José Zoning Code defines affordable rental or ownership of housing units as restricted affordable units and anything not within this category as non-restricted units.¹⁰ To ensure affordable units are being constructed, the Code requires concurrent construction of restricted affordable units with non-restricted units unless an alternative schedule is agreed to in the regulatory agreement and that restricted affordable units be dispersed throughout the project, without concentration. Likewise, to protect against singling out affordable housing, restricted housing should be of similar character to non-restricted units and the overall project including construction, material, and quality, both inside and out, and should be functionally equivalent to that of non-restricted units.

A density bonus may be applied to residential projects of five or more units that provide affordable, senior, or special needs housing. The greater the affordability levels, the greater the density bonus to allow more dwelling units — by 50% in most cases and up to 80% for affordable-only housing projects — than otherwise allowed by the applicable zoning district and General Plan land use designation. Density bonus may be approved only in conjunction with a development permit. As required by State law, the Code also identifies bonuses in response to certain donations of land and the inclusion of childcare centers in some developments.

Under the Density Bonus Chapter, the City allows up to four incentives and/or concessions to be used for each development project depending on the ratio of affordable units, see inset.

In addition to incentives and/or concessions, developers can also apply for waivers from, or modifications to, development standards. Waiver or modification are contingent upon on applicant providing proof that a given standard would preclude development with the density bonus or incentive requested.¹¹ Waivers and/or reduction of development standards do not count as an incentive or concession and there is no limit on the number of these that can be requested or granted.

¹⁰ SAN JOSE MUNICIPAL CODE Ch. 20 § 20.190.020

¹¹ SAN JOSE MUNICIPAL CODE Ch. 20 § 20.190.070

INCENTIVES & CONCESSIONS TO PROMOTE USE OF DENSITY BONUS

As outlined in the
San Jose Municipal Code

www.sanjoseca.gov/MunicipalCode

Table 20-290 – Number of parking spaces required by restricted affordable units or category regardless of proximity to transit.

Table 20-300 – Reduction of front setback area by housing type based on percentage of restricted affordable units up to no more than 5 feet.

Table 20-310 – Reduction of rear interior setback area by housing type based on percentage of restricted affordable units up to no more than 5 feet.

Table 20-320 – Reduction of rear corner setback area by housing type based on percentage of restricted affordable units up to no more than 3 feet in R-MH, CO, CP, CN, CG, PQP, MS-G, MS-C, or 5 feet otherwise.

Table 20-330 – Reduction in the number of parking spaces for SRO facilities within ½ mile of major transit stops or not within ½ of an existing transit stop.

OTHER INCENTIVES

An applicant may request any Incentive(s) specified above, or others, so long as the incentive would result in identifiable and actual cost reductions to provide for Affordable Housing Costs or Affordable Rents for Restricted Affordable Units

Senate Bill 35 Streamlined Projects

Senate Bill 35 (2017) requires local government to streamline review and approval of eligible affordable housing projects when the number of total issued building permits are less than the Regional Housing Needs Allocation (RHNA) for the current reporting period. Streamlining involves facilitation of ministerial approval for qualifying projects and projects may continue to apply for streamlining until the next reporting period. For a project to qualify, a locality must either not have submitted a production report, or an annual housing element report for at least two years, or meet any of the following:

- If the production report reflects that there were fewer units of above moderate-income housing approved than were required. In addition, if the project contains more than 10 units of housing, the project seeking approval dedicates a minimum of 10 percent of the total number of units to housing affordable to households making below 80 percent of the area median income (AMI).
- If the production report reflects that there were fewer units of housing affordable to households making below 80 percent of the area median income that were issued building permits than were required. The project seeking approval dedicates 50 percent of the total number of units to housing affordable to households making below 80 percent of the area median income.
- If production report reflects fewer units of housing affordable to any income level described in clause (i) or (ii) that were issued building permits than were required for the regional housing needs assessment cycle for that reporting period, the project seeking approval may choose between utilizing clause (i) or (ii).
- If any localities Zoning Ordinance requires greater allocation for either clause (i) or (ii) the Ordinance applies.

San José has not met its RHNA allocation for households with incomes below 80 percent AMI which means projects that meet the above requirements projects may proceed under SB 35. Ministerial review for SB 35 projects are based on compliance with objective standards. Qualifying projects are not subject to environmental review under the California Environmental Quality Act (CEQA).

Per SB 35, City staff must review applications for qualifying housing developments within a statutory time frame. Staff must determine if the project is eligible for streamlined approval within 60 days of application submittal for projects of 150 or fewer units, or within 90 days for larger projects. If the application is eligible for review under SB 35, then the jurisdiction must review the project within 90 days after application submittal for projects of 150 or fewer units, or within 180 days for larger projects.

In 2019, the City codified SB 35 streamlining provisions (as well as those for AB 2162 and AB 101) in the zoning code under Chapter 20.195 Ministerial Approvals. The City also provides eligibility information on its website and there is a separate SB 35 development application available for these types of projects. As of June 2022, San José has approved more than 1,500 units under the SB 35 process.

Senate Bill 330 / Housing Crisis Act of 2019

To accelerate housing production, Senate Bill 330, also known as the Housing Crisis Act of 2019, prevents certain land use and zoning restrictions to alleviate or remove constraints preventing construction

As of June 2022, San José has approved more than 1,500 units under the SB 35 process.

of new housing, including affordable housing, by limiting the way local governments may reduce capacity of residential on properties.

To help remove barriers, SB 330 allows a developer to submit a preliminary application in which they can provide information on the proposed development before a formal planning submittal. Upon submittal of the preliminary application and payment of fees, a housing developer can “freeze” other applicable fees and development standards that apply to their project while they assemble the rest of the material necessary for a full application submittal.¹² San José has a formal SB 330 Preliminary Application in place for developers interested in taking advantage of this option.

Impact of SB 1333 (2018). By 1974, state law required cities, excepting charter cities, to align their zoning districts with their General Plan documents.¹³ Senate Bill 1333, which passed in 2018, requires charter cities, including San José, to also align their zoning districts with their General Plan land use designations. SB 1333 does not circumvent the Housing Crisis Act which means that to comply with SB 1333, San José will also have to account for “no net loss” of residential capacity under SB 330.

Senate Bill 940 authorizes the City of San José to proactively change zoning to a more intensive use, commonly referred to as upzoning, and bank the resulting capacity for use in lowering other zones to a less intensive use and avoid the “no net loss” provision of the Housing Crisis Act. This only applies to zoning actions and may not be used in conjunction with other changes that are subject to SB 330.¹⁴

To comply with the Housing Crisis Act and SB 1333, San José created a multiyear process:

- Phase 1(a) was approved by City Council in June 2019, which included changes to permitting requirements across all zoning districts.
- Phase 1(b) was approved by City Council in June 2021 and created six new Urban Village and Mixed-Use zoning districts to support areas that are planned for mixed-use development and high-density residential or commercial uses.
- Phase 2 entails rezoning select areas of the City. Phase 2 is estimated to rezone approximately 1,140 properties before the end of the 2022 fiscal year. Property owners are notified in advance of the rezoning, which also involves a public hearing before the City Council.

¹² CA CODE § 65589.5, 65940, 65943, 65950, 65905.5, 65913.10, 65941.1. Accessed March 2022. https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB330

¹³ CA CODE § 65860(a)

¹⁴ CA CODE § 66300. Accessed March 2022. https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB940

4.3.6 Planning Process and Application Fees

A summary comparison of planning permit processes and respective decision-maker is shown in *Table 4-9*. Process types include use of the previously referenced conventional zoning districts or the planned development zone, as well as various types of development permit as described in Chapter 20.100 of the Zoning Code. These development permits include:

- Site development permit
- Conditional use permit
- Special use permit
- Planned development permit

Permit Procedures

For residential uses in each zoning district, the City's Zoning Code indicates whether the uses is permitted; permitted as a conditional use; permitted as a special use; or is prohibited. Permitted uses are those allowed without discretionary review in designated zoning districts provided the project complies with all development standards. The Director of Planning, Building and Code Enforcement has the authority to approve a site development permit (H) or a special use permit (SUP) through a public hearing process to ensure that basic health and safety, and general welfare concerns are met. These permits may be appealed to the Planning Commission.

Table 4-9: Decision-Making Authority for Planning Processes

PROCESS COMPONENT	CONVENTIONAL PERMIT PROCESSES			PLANNED DEVELOPMENT PROCESS	
	SITE DEVELOPMENT PERMIT	SPECIAL / CONDITIONAL USE PERMIT	CONVENTIONAL ZONING	PD PERMIT	PD ZONING
	PLANNING DIRECTOR	DIRECTOR / PLANNING COMMISSION	PLANNING COMMISSION / CITY COUNCIL	PLANNING DIRECTOR	PLANNING COMMISSION / CITY COUNCIL
Environmental Review	X	X	X		X
Maximum Development Density			X		X
Approve Number of Units	X	X		X	
Infrastructure Requirement	X	X	X		X
Final Architectural Design	X	X			
Final Grading/Drainage Design	X	X			
Final Landscape Design	X	X			
Minor Modification to Approved Permit					
Final Discretionary Approval Prior To Building Permit	X	X			

SOURCE: City of San José Planning Division, 2022.

Conditional use permits (CUPs) are approved by the Planning Commission and appealable to the City Council. Discretionary permit approvals are applicable to Conditional Use permits (CUP) and are required in specific zones for fraternity uses, residential care facilities, mobile home parks, temporary residential

shelters, and residential hotels or SROs. Over the past few years, zoning code amendments approved changes to eliminate CUP requirements for several uses and delegated new approval authority for some entitlements to reduce time and cost for processing these uses. *Table 4-3* describes the housing types by permitted uses.

Determining which process a residential or mixed-use project must go through depends on the size and complexity of the proposal, whether code deviations and/or variances are requested, and whether other Zoning Code regulations (e.g., for conditional uses, Historical Resources, etc.) apply. The City has various permit review processes with prescribed timelines and initial fees, see *Table 4-10*.

The City works with developers and project applicants to expedite approval procedures and eliminate unnecessary time constraints on development. A preliminary review process is available to applicants through which City staff can offer early guidance on zoning conformity and necessary permitting processes. With preliminary review, the applicant files a project description and site plan, which is reviewed by the Planning Division, Public Works and other departments for consistency with City ordinances and General Plan guidelines. Concurrently, staff complete a plan check review.

Table 4-10: Development Project Timelines and Initial Submittal Fees

TYPE OF PERMIT OR APPROVAL	TYPICAL APPLICATION TIMELINE	INITIAL SUBMITTAL FEES
SB 35/AB 216 Streamlined Ministerial Permit	3 months	\$ 9,304
Site Development Permit	7 months	\$12,952
Special Use Permit	4-7 months	\$ 8,593
Conditional Use Permit	7 months	\$22,950
Planned Development Permit	7 months	\$13,023
Rezoning	5 months	\$13,212
Tentative Map	6 months	\$12,882
General Plan Amendments	9-12 months	\$34,235

SOURCE: City of San José Planning Division, 2022. See also www.sanjoseca.gov/PlanningApplications.

A single-family new construction project may be approved in about 12 weeks from date of plan submission as long as no variances, exceptions, or zone changes are needed, and if the project submittal does not need revisions and resubmittal. The City of San José does not require design review of single-family projects if the project meets the development standards of the Zoning Code. Thus, the time required for development approval of single-family projects does not result in substantial constraints to housing developers.

The Building Division performs plan checks and issues building permits. Larger projects requiring site development permits and special use permits are approved by the Director of Planning, Building and Code Enforcement at public permit hearings, which are publicly noticed and typically take place weekly.

Project review, as well as any required public hearing, may pose a constraint to the development of multifamily projects

Further description of permits and processing procedures are provided in the subsequent sections of this chapter. The initial fees for a use permit entitlement are based on staff hours that include application intake, initial review, project routing, plan check, site inspection and visits, letters to applicants, review

of revisions, coordination with other departments and agencies, public outreach, preparation of staff reports, public noticing for hearings, and staffing the hearings.

Site Plan and Design Review

The objective of design review is to enhance street level design, aesthetic quality of the streetscape, and create variety in new construction that culminates in a unique identity or special physical character in a given area. Design is considered in new construction, site planning, landscaping, signage, among others, and encompasses aesthetic, architectural, or urban design quality and compatibility with surrounding development.

The City incorporates objective urban and community design standards in the General Plan, Zoning Code, the Citywide Design Standards and Guidelines, and other design standards documents such as the Downtown Design Guidelines, Diridon Station Area Plan, and urban village plans. Site plan and design review ensures that proposed developments are consistent with the General Plan and any applicable community or specific plans, as well as the zoning code and design guidelines. In addition, this review ensures that utilities and infrastructure are sufficient to support the proposed development and are compatible with City standards.

Decision-Makers and Consistency Findings

Development proposals that require discretionary action(s) fall into one of three decision-making categories:

- **The City Council** is the highest decision-making authority within City government; it adopts plans, sets policy direction, and reviews all legislative items, including the rezoning of property and General Plan amendments after considering recommendations made by City staff and the Planning Commission.
- **The Planning Commission**, an eleven-member body appointed by the City Council, meets twice a month to review proposed development projects, Zoning Ordinance changes, and new plans or plan amendments. The Planning Commission makes recommendations on most items to the City Council. However, it is authorized to approve certain types of permits, such as Conditional Use Permits, without involving Council approval. The City Council is the final decision-maker on appeals of Planning Commission decisions.
- **The Director of Planning, Building and Code Enforcement** oversees the planning process in San José. The Director is a City staff member and is authorized by the City Council to issue certain types of development permits.

City Council, Planning Commission, and Director hearings are open to the public. An agenda is available at least seven days prior to the meeting and informs the public of the issues under consideration; agendas are posted on the City's website and on the information board at City Hall. The public is welcome to attend and comment on any of the issues under discussion.

Table 4-11 shows the findings that a project type must meet to gain approval. These findings ensure compatibility with existing and future uses and consistency with the City's guiding documents like the General Plan. Most residential projects are permitted through the Site Development Permit process.

Table 4-11: Consistency Findings for Types of Development Permits

SITE DEVELOPMENT PERMIT
<p>The proposed project must be:</p> <ol style="list-style-type: none"> 1. Consistent with and will further the policies of the general plan and applicable specific plans and area development policies. 2. Conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project. 3. Consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency. 4. The interrelationship between the orientation, location, and elevations of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious. 5. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood. 6. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties. 7. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood. 8. Traffic access, pedestrian access and parking are adequate.
CONDITIONAL USE PERMIT OR SPECIAL USE PERMIT
<p>The proposed project must be:</p> <ol style="list-style-type: none"> 1. Consistent with and will further the policies of the general plan and applicable specific plans and area development policies. 2. Conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project. 3. Consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency. 4. Use at the location requested will not: Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or impair the utility or value of property of other persons located in the vicinity of the site; or be detrimental to public health, safety, or general welfare. 5. Site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate the use with existing and planned uses in the surrounding area. 6. Site is adequately served by highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; by other public or private service facilities as are required. 7. Environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

Table continued >

Table 4-12 Continued: Consistency Findings for Types of Development Permits

PLANNED DEVELOPMENT PERMIT
<p>The proposed project must be:</p> <ol style="list-style-type: none"> 1. Consistent with and furthers the policies of the general plan; 2. Conforms in all respects to the planned development zoning of the property; 3. Consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency; 4. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious; 5. The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.

SOURCE: City of San José Planning Division, 2022.

Staff have found that these consistency findings are neither a constraint on housing production nor that they slow the City's ability to recommend approval of projects. City staff understand that projects that comply with objective development criteria cannot be denied or reduced in density, subject to a narrow health and safety exception. Instances of discretion applied during the Site Plan and Design Review process are limited to comments suggesting cohesiveness with the surrounding environment, such as bulk control and mass articulation.

Objective and Subjective Standards

As discussed in the Design Guidelines section, development standards are intended to allow residential projects to achieve the maximum densities through various means to avoid undue constraints. Affordable and market rate housing are subject to guidelines to produce high quality affordable housing acceptable to neighborhoods throughout the City. A project applicant may request an exception to the design standards contained in the guidelines. Such a request must be made in writing as part of the Planning application for the proposed project. The application for an exception must contain detailed information on the design standard to be waived; how the physical constraints and unique situation of the project site make it infeasible to comply with the design standard; how the proposed project meets the design standard at issue to the extent feasible; and how the request meets each exception requirement. The decision-maker considers the request and information provided to make certain findings to either approve or deny the request.

4.3.7 Fees and Exactions

The City collects impact fees, taxes and exactions from new residential development to finance new public infrastructure, such as parks; to cover the cost of adding new capacity to existing public infrastructure such as wastewater; or to cover the cost of processing permits.

A study performed by the consultant Baird + Driskell in 2022 showed that the City of San José fees fall below that of many other cities in Santa Clara County. Additional analysis done in 2022 by the consultant Century Urban, as a part of the City's regular Cost of Development Study,

shows the typical fees for multifamily development, see Table 4-12. Total permit and fee costs for a new single-family home is estimated at \$9,919 and is the lowest compared to other cities in Santa Clara County.

Table 4-12: Estimate of City Taxes and Fees On New Multifamily Construction, 2022

Does not include Inclusionary Housing Ordinance In-Lieu Fees or potential traffic impact/mitigation fees.

TYPE OF FEE OR TAX	DEVELOPMENT TYPE AND LOCATION *			
	TYPE III **			TYPE V **
	WEST	CENTRAL	NORTH	SOUTH & EAST
Planning and Building Fees Per Unit	\$ 4,781	\$ 4,781	\$4,781	\$ 5,657
Construction Tax Per Unit	\$ 6,556	\$ 6,556	\$ 6,556	\$ 6,332
Total Parkland In-Lieu Fees (w/o credit)	\$20,800	\$22,600	\$13,800	\$13,100
Typical Parkland In-Lieu Fees (w/ credit) ***	\$14,560	\$15,820	\$ 9,660	\$ 9,170
School Fees Per Unit	\$ 2,756	\$ 3,915	\$ 2,520	\$ 2,396
Total Fees	\$28,653	\$27,157	\$23,517	\$36,655

* Location Map: <https://csj.maps.arcgis.com/apps/webappviewer/index.html?id=8518bc095ae54f4ea025d7743c650881>
** Type III is 7-story mid-rise building; Type V is 5-story low-rise building.
*** Assumes a 30% reduction in fee based on credits for provide improvements or build recreation space.

SOURCE: City of San José and Century Urban, 2022.

Park Fees

In 1988, the City Council adopted the Parkland Dedication Ordinance to help meet the demand for neighborhood and community parks generated by new residential development. In 1992, the City Council adopted the Park Impact Fee, which applied parkland dedication requirements to new units in non-subdivided residential projects. Both processes require that new housing projects either dedicate land for public parks, pay an in-lieu fee, construct new park facilities, or a combination of these.

School Fees

As permitted under state law, school districts in San José may impose an impact fee on new development. There are 19 school districts in San José. Depending on the location of a project, property owners may pay fees to a unified district or to both elementary and secondary school districts. These fees are collected by the school districts, and the City requires proof of payment as part of the building permit issuance process.

Construction Taxes

San José imposes four construction-related excise taxes on residential development:

- Building and Structure Tax
- Commercial-Residential-Mobilehome Park Building Tax
- Construction Tax
- Residential Construction Tax

The Building and Structure Tax and Commercial-Residential-Mobilehome Park Building Tax are assessed based on the building valuation. The Construction Tax and the Residential Construction Tax are assessed based on the number of dwelling units. These taxes are either restricted or have historically been used to finance transportation improvements, such as the construction, replacement, widening, and modification (but not maintenance) of City roadways.

The City also collects taxes for regional or statewide programs/funds. The fees are collected at the time of issuance of a building permit and subsequently transmitted to other agencies. These programs/funds include the California Strong Motion Instrumentation Program (CSMIP) that pertains to geologic analysis and the Building Standards Administration Special Revolving Fund (BSARSF) related to implementation of green building standards. In addition, the Santa Clara Valley Habitat Agency, a Joint Powers Authority composed of the cities of San José, Morgan Hill, and Gilroy along with the County of Santa Clara, initiated the collection of Habitat Conservation Plan fees in October 2013.

Entitlement Fees

The City imposes entitlement fees based on a cost-recovery model. These fees cover City staff time necessary to process permits, including completing internal review, conducting community meetings and public hearings, and performing inspections consistent with the General Plan, Zoning Ordinance, Building Code, and other applicable laws such as the California Environmental Quality Act (CEQA). Table 13 below provides a summary of entitlement fees associated with the processing of a residential project pursuant to the Planned Development zoning/permit process.

Construction Fees

Construction fees cover permit, plan check, and inspection fees for services provided by the City's Building Division, Public Works Department, and Fire Department. Initial fees are charged based on a historical analysis of time required to perform the services and/or the number of inspections typically required for a project type. When the value of the services provided (based on an hourly rate) exceeds the initial fee, additional service time must be purchased.

Resources to Alleviate Constraints Relating to Fees and Exactions. The City has been active on a number of fronts to alleviate constraints associated with the payment of construction related fees and taxes and to further the goals and policies of the General Plan. These actions include:

- In 2010, the City Council amended the schedule of parkland fees specifically for low income housing units, setting the rate at 50% of the fees normally applicable to each housing type. Previously the entire fee was waived for affordable housing developments but was raised to the current 50% reduction to generate additional parkland revenue, while continuing to provide some incentive for the construction of affordable housing in San José.
- In 2013, the City Council expanded and extended the Downtown High Rise Development Incentive Program, temporarily suspending the collection of 50% of the construction taxes for qualified projects. This program recognizes that a completed high-rise tower adds \$150 million or more in assessed value to a site, thereby increasing tax rolls and providing a net-positive financial impact to the City, and constitutes the most environmentally sensitive means of accommodating substantial anticipated population growth, resulting in a net reduction in greenhouse gas emissions and vehicle-miles-traveled (VMT) over any alternative.

- In 2022, after focus group discussions with affordable housing developers on the cost of development, staff has begun to explore the temporary suspension of Construction Taxes for affordable housing. Staff will bring forward a recommendation to the City Council in fall 2022.

In summary, the fees and exactions applicable to residential development in San José are comparable or lower, on average, than that of other cities in the South Bay region and thus are not an undue constraint; see *Table 4-13*. This is also true for affordable housing, where applicable parkland fees are set at a reduced rate.

Table 4-13: Comparison of Housing Development Fees Across Cities in Santa Clara County

Includes Entitlement, Building Permit, and Impact Fees

JURISDICTION	SINGLE-FAMILY	SMALL MULTIFAMILY	LARGE MULTIFAMILY
Campbell	\$72,556	\$20,599	\$18,541
Cupertino	\$136,596	\$77,770	\$73,959
Gilroy	\$69,219	\$40,195	\$39,135
Los Altos Hills	\$146,631	N/A	N/A
Los Gatos	\$32,458	\$5,764	\$3,269
Milpitas	\$77,198	\$74,326	\$59,740
Monte Sereno	\$33,445	\$4,815	\$4,156
Morgan Hill	\$55,903	\$41,374	\$36,396
Mountain View	\$90,423	\$69,497	\$82,591
San Jose	\$9,919	\$23,410	\$23,410
Santa Clara	\$14,653	\$6,733	\$2,156
Saratoga	\$64,272	\$17,063	\$15,391
Sunnyvale	\$133,389	\$126,673	\$98,292
Unincorporated /County	\$25,166	N/A	N/A

SOURCE: City of San José Planning Division, 2022.

The fees, taxes, and other exactions applicable to residential development in San José are comparable or lower, on average, than that of other cities in the South Bay region, and thus are not an undue constraint.

4.3.8 Types of Housing

The City of San José encourages and facilitates the development of a variety of housing types, including accessible housing, emergency shelters (i.e., temporary residential shelters), transitional housing, supportive housing, housing for agricultural employees, and single-room-occupancy (SRO) units. The following analysis explains how the City facilitates these housing types consistent with state law requirements.

Reasonable Accommodation

Chapter 20.160 titled Requests for Reasonable Accommodation describes the application process for making a request for reasonable accommodation, whose intent is to accommodate housing needs of persons with disabilities to the greatest extent feasible. Requests are evaluated individually on a case-by-case basis.

The City's Reasonable Accommodation process provides flexibility in the application of the City's Zoning Code regulations for housing. Unlike the use permit and variance processes, the reasonable accommodation criteria are set up to assess whether an accommodation is necessary for relief from zoning regulations in order to afford individuals with disabilities to have equal opportunity to use and enjoy a dwelling. When making a determination, staff shall consider the following factors:

1. Special need created by the disability;
2. Potential benefit that can be accomplished by the requested modification;
3. Potential impact on surrounding uses;
4. Physical attributes of the property and structures;
5. Alternative accommodations which may provide an equivalent level of benefit;
6. In the case of a determination involving a One-family Dwelling, whether the household would be considered a Single Housekeeping Unit if it were not using special services that are required because of the disabilities of the residents;
7. Whether the requested accommodation would impose an undue financial or administrative burden on the City; and
8. Whether the requested accommodation would require a fundamental alteration in the nature of a program.

Consideration of the potential impact on surrounding uses helps staff to identify and disclose how a requested accommodation could potentially impact the character of a neighborhood or the health and safety of surrounding occupants who may also have special needs. For example, a requested accommodation could be for installation of equipment within a minimum required setback. Upon investigation, there could be a finding that the equipment might emit fumes or odors that could unduly impact a neighboring occupant with a respiratory disability. In such a situation, the City could impose mitigation measures in the requested accommodation to address such a potential impact to a surrounding use. This review helps to maintain compliance with fair housing laws. The Housing Element includes a Work Plan item to review and revise as appropriate the wording of this finding in the Zoning Code to clarify the intent of the finding as described above.

Housing for Persons with Disabilities

San José allows licensed residential care facilities or group homes in any area zoned for residential use for six or fewer persons by right. A special use or conditional use permit are required for facilities with seven or more persons. At time of application, staff consider only the City's design review requirements and do not impose special occupancy permit or business license requirements for the establishment or retrofit of structures for residential use by persons with disabilities. If structural or architectural improvements are needed, then a building permit is required. Requirements for building permits and inspections are straightforward to avoid delays or rejection for retrofitting. The City has no authority to approve or deny either a residential-care facility or group home of six or fewer people except for compliance with building code requirements.

The City provides reasonable accommodation for persons with disabilities, which may include retrofitting or converting existing buildings or construction of new buildings to meet the need of persons with disabilities. The City does not restrict occupancy of residences to related individuals and does not define family or enforce a definition, nor does the Land Use Element of the General Plan seek to restrict the siting of special needs housing. In summary, City planning and building review process have not been used to deny or substantially modify a housing project for persons with disabilities to the point where it is no longer feasible.

Emergency Homeless Shelters

Housing Element law requires the identification of one or more zoning districts where emergency homeless shelters are allowed without a discretionary permit, and the identification of adequate sites for emergency shelters and adequate provisions for the needs of existing and future projected shelters.¹⁵ To enable this, state law limits development standards and locational restrictions as applied to emergency shelters and requires the identification of by right zoning districts that can accommodate the homelessness point-in-time count from the previous planning period.¹⁶

San José complies with state law by defining emergency residential shelters as a place "...where emergency temporary lodging is provided to persons who are homeless, and where on-site supervision is provided whenever such shelter is occupied."¹⁷ The length of stay at any emergency residential shelter is specified in the Specific Use Regulations section of the Zoning Code, which stipulates a maximum of 60 days unless a conditional use permit makes findings for an exception.¹⁸ Exceptions may not exceed 18 months and must include enrollment of person(s) in drug/alcohol recovery or treatment provided on-site. Any shelter with a conditional permit must also submit a management plan that includes good neighbor issues, transportation issues, client supervision, client services, and food services. The management plan would also include written and objective findings that comply with state law.¹⁹

San José created the Combined Industrial/Commercial (CIC) Zoning district through Ordinance No. 29218 in April 2013, permitting both conditionally and by right, Emergency Residential Shelters in Industrial Districts, see *Table 4-4*.²⁰

15 CA CODE § 65583

16 CA CODE § 65582(a)(4)

17 SAN JOSE MUNICIPAL CODE Ch. 20 § 20.200.360

18 SAN JOSE MUNICIPAL CODE Ch. 20 § 20.80

19 CA CODE § 65582(a)(4)

20 SAN JOSE RESOLUTION 29218. Accessed March 2022. <https://records.sanjoseca.gov/Ordinances/ORD29218.PDF>

Since 2013 San José has expanded the zoning districts to permit the use of Shelters to Commercial and Urban and Mixed-Use Zoning districts with a Conditional or Special Use Permit, see *Table 4-4*.

Capacity for Emergency Homeless Shelters. State law requires the Housing Element to demonstrate that wherever emergency shelters are allowed by right, that sufficient capacity exists to accommodate the most recent point-in-time homelessness count conducted before the start of the planning period. Due to limitations relating to the COVID-19 pandemic, San José must rely on the January 2019 homeless census and survey, which counted 6,097 persons experiencing homelessness.²¹

As described above, Emergency Residential Shelters with 50 or fewer beds are permitted by-right in the CIC District. Development regulations for this district are objective criteria required by other similar districts; see *Table 4-14*.

Table 4-14: Combined Industrial/Commercial Development Regulations

LOT SIZE	
Minimum Lot Size:	6,000 sq.ft.
Minimum Non-Residential Unit Size:	4,000 sq.ft.
SETBACKS	
Front:	15 ft
Front, Parking/Circulation:	20 ft
Front, Truck/Bus Parking:	40 ft
<i>Below, from an adjoining residential use, apply the greater number</i>	
Front, Loading Dock:	60 ft or 100 ft
Side:	0 or 25 ft
Side, Parking/Circulation:	0 or 25 ft
Side, Truck/Bus Parking:	0 or 25 ft
Side, Loading Dock:	0 ft or 100 ft
Rear:	0 or 25 ft
Rear, Parking/Circulation:	0 or 25 ft
Rear, Truck/Bus Parking:	0 or 25 ft
Rear, Loading Dock:	0 ft or 100 ft
HEIGHT AND FRONTAGE	
Maximum Height**:	50 ft
Minimum Street Frontage:	60 ft
** Specific height restrictions and exceptions may apply, see Municipal Code Chapter 20.85	

SOURCE: City of San José Planning Division, 2022.

21 "City of San José Homeless Census & Survey Comprehensive Report 2019". Applied Survey Research. Accessed March 2022: <https://www.sanjoseca.gov/home/showdocument?id=38890>

Currently there are 89 parcels in San José with CIC zoning. If we assume that these sites can provide 50 or fewer beds (required for by right purposes), then the total theoretical maximum beds possible is 4,450. The deficit between theoretical beds possible and the point-in-time homelessness count of 2019 is 1,647. Staff has included a program in the Housing Element to address this deficit, see Chapter 3: Housing goals, objectives, policies and programs.

The shelters that exist today are conditionally permitted and none of these exist in the CIC district. The inventory of beds these shelters provide fluctuates by month in the following categories: year-round, seasonal, and overflow. The total number of beds in each category are as follows:

- Year-round has approximately 673 to 738 beds;
- Seasonal has 15 beds; and
- Overflow has 50 to 170 beds.

The total number of beds by month are further broken down into total number of beds available each night for the month. This total is compared to the number of beds used each month, by the three categories described previously, see *Figure 4-1, 4-2 and 4-3*.

What these figures show is that despite a high utilization rate of year-round shelters, they are not at maximum capacity. The seasonal and overflow charts show lower utilization rates and surplus beds. What these charts may be showing are locational issues, i.e., shelters are not close to the populations they serve, or it could be some other factor. Based on this analysis, the City will include a program to evaluate next steps for providing sufficient by-right shelters (see Chapter 3).

Figure 4-1: Emergency Residential Shelters - Year-Round Analysis of Bed Usage

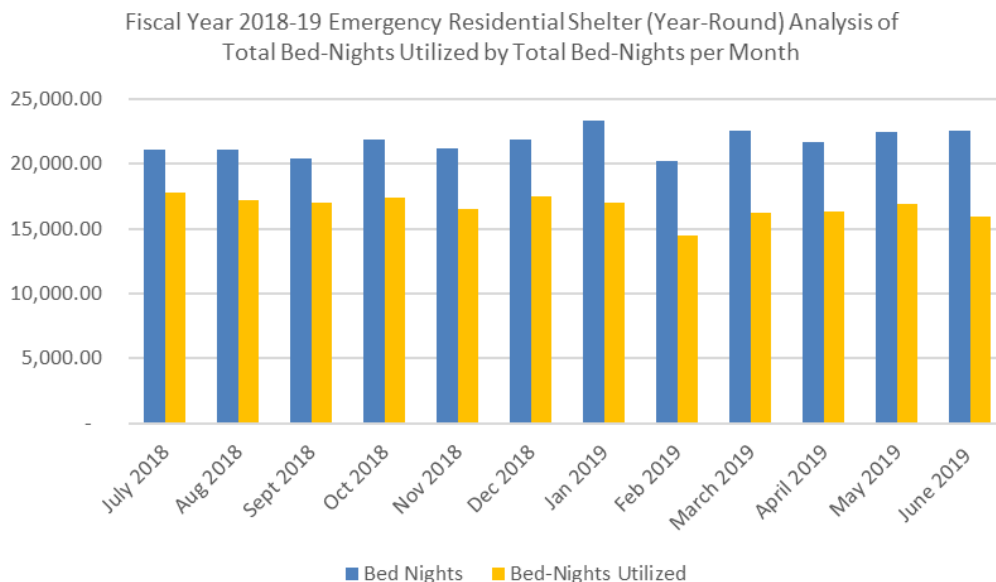


Figure 4-2: Emergency Residential Shelters - Seasonal Analysis of Bed Usage

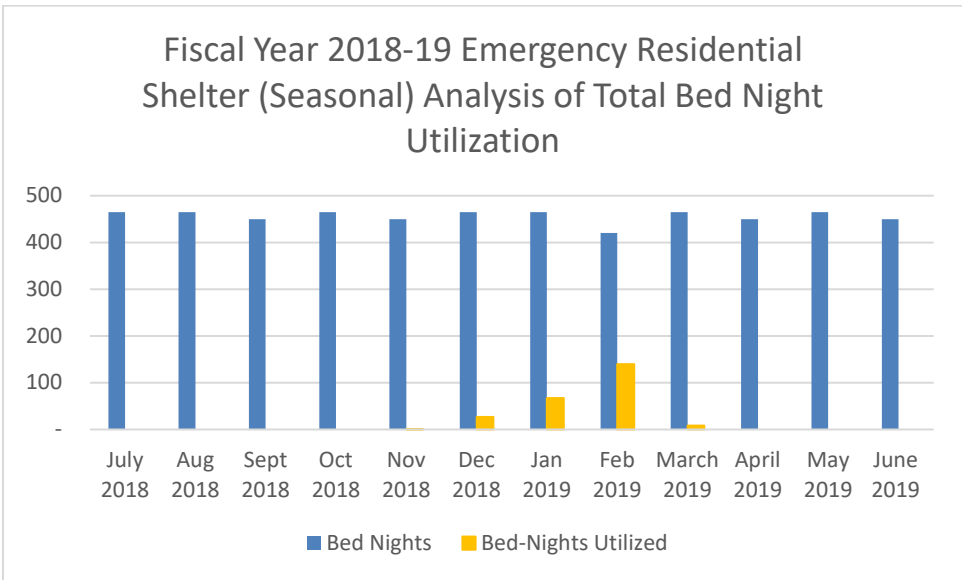
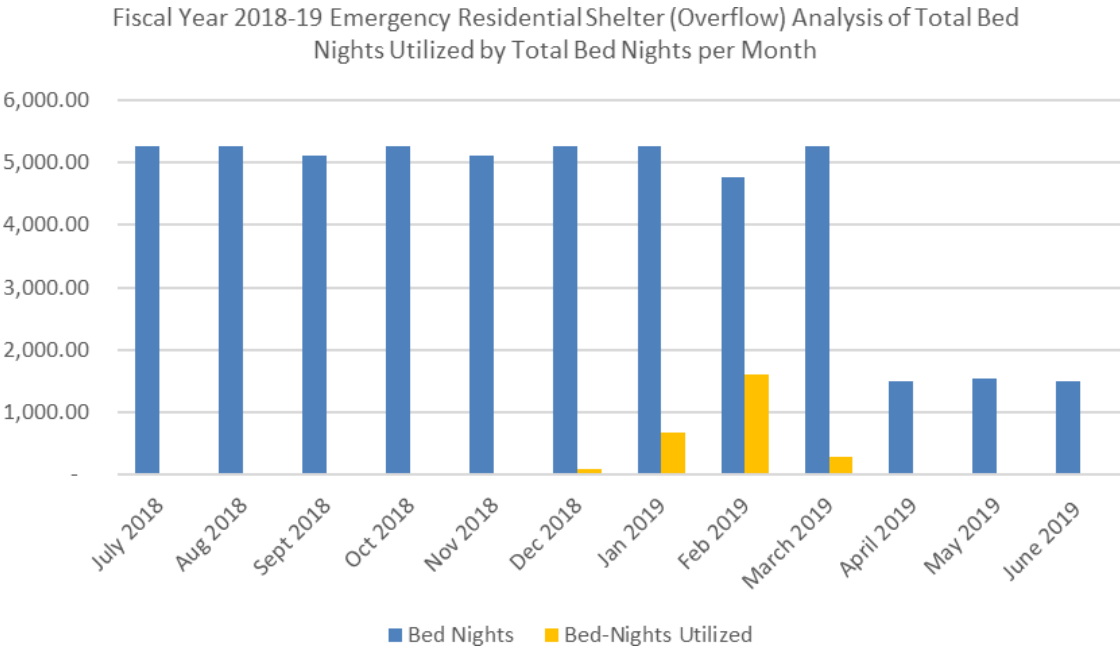


Figure 4-3: Emergency Residential Shelters - Overflow Analysis of Bed Usage



Strategies for Providing Emergency Shelters. Project Homekey is an opportunity for state, regional, and local entities to develop a broad range of housing types (e.g., hotels, hostels, single-family homes, apartment buildings, adult residential facilities, manufactured housing), and to convert commercial properties and buildings to permanent or interim housing.

The City completed round one of the Project Homekey program, which focused on conversion of motels/hotels into permanent supportive housing. As part of round two, San José has been engaging with the community through City Council study sessions and one-on-one stakeholder engagement between residents and stakeholders. Round two has identified several opportunities for increasing housing so far, which include rapid rehousing (quickly re-housed and stabilized) emergency shelters, and permanent housing. Permanent housing under round two has a total of 764 units under construction and an additional 675 units planned.

In addition to providing new units, San José is planning to increase the total number of shelters with emergency interim housing. The City operates five interim housing communities, also called Bridge Housing Communities (BHC). The first BHC opened in January 2020 to provide interim housing for formerly unhoused individuals. The purpose of interim housing is to give participants an opportunity to stabilize their lives and work toward self-sufficiency. The City does not charge people rent while they live at BHCs or other interim housing sites.

Program participants have access to numerous resources to help them succeed in their efforts to find permanent housing and remain stably housed. These resources include job placement assistance, mental health counseling, life skills training, and assistance in applying for permanent housing.

While living in interim housing, program participants have individual rooms. Amenities such as kitchen, pantry and laundry facilities are shared by all residents. It is typical for program participants to live in interim housing for a few months before moving into permanent housing. The first two BHC sites are located on Mabury Road near the Berryessa BART station, and on Felipe Avenue near Story Road with plans to increase the number of BHC sites under the Project Homekey program.

Emergency Temporary Shelter Facilities

San José first enacted a shelter crisis, pursuant to the provisions of the State's Shelter Crisis Act,²² in December of 2015.²³ This resolution allowed four City owned facilities to be used as overnight warming shelters for homeless persons against severe weather for the duration of the crisis period. Every year since, San José has declared a shelter crisis during periods of inclement weather to provide shelter for the homeless.

In April of 2020, the City Council adopted an emergency order and declared a shelter crisis in response to the COVID-19 pandemic, which ordered a suspension of Zoning Code and General Plan requirements, among others, where applicable to shelters either established or expanded during the COVID-19 pandemic.²⁴ San José adopted several resolutions in the early years of COVID-19 to support housing homeless persons at risk of exposure during the duration of the shelter crisis, see *Table 4-15*. The shelter crisis has not been lifted to date.

²² CA CODE § 8698

²³ SAN JOSE RESOLUTION 77606. Accessed March 2022: <https://records.sanjoseca.gov/Resolutions/RES77606.PDF>

²⁴ SAN JOSE MEMORANDUM. Accessed March 2022: <https://sanjose.legistar.com/View.ashx?M=F&ID=8233034&GUID=3E82A8D0-B560-42CF-9E72-A94D73384913>

During the COVID-19 pandemic, the City of San José built three Emergency Interim Housing (EIH) communities. These are similar to the BHC facilities described previously although the site design and construction are different. The EIH communities have been used to house medically vulnerable unhoused residents who are at risk of severe illness or death if they contract COVID-19.

Table 4-15: Resolutions in Support of Emergency Residential Shelters

RESOLUTION NO.	DESCRIPTION
79490	Execute agreements and amendments with Homefirst services of Santa Clara county, Allied Housing, inc., and the Health Trust for increased or additional temporary sheltering operation services necessary for COVID-19
79750	As a result of COVID-19 City Council redirected \$17,232,510 of State Homeless Housing Assistance and Prevention funds toward purchase and/or construction of emergency housing, including prefabricated modular units, for homeless persons impacted by the COVID-19 pandemic. The City then developed three emergency interim housing communities on Monterey and Bernal Road, Rue Ferrari near Highway 101, and Evans Lane.
79517	Enter into agreement with Adobe Services in the amount of \$728,855 to operate 90-unit emergency non-congregate shelter trailers provided by provided by the Governor's Office of Emergency Services.
79780	San José partnered with County of Santa Clara to share housing cost for homeless persons from San Jose not to exceed \$1,794,447.
79788	Provide for shower/laundry trailers, portable restrooms/hand washing stations, and temporary fencing for homeless until 2025, not to exceed approximately \$1.5 million, to support temporary shelters which were not equipped with these facilities to accommodate these populations.

SOURCE: City of San José Planning Division, 2022.

The Zoning Code also permits temporary and incidental shelter use in places of assembly. Incidental shelters are defined as an incidental use to an existing primary assembly use for homeless persons so long as the incidental use occupies less than 50% of the usable square footage of the assembly building(s). The shelter must be inside the existing building(s) and is considered separately from an emergency residential shelter.

Assembly uses in the Zoning Code include, but are not limited to, religious assemblies, gymnasiums, libraries, theaters, schools, and community centers. Assembly uses can provide incidental shelter if they first either have or obtain a conditional permit that allows it, or otherwise amend a conditional permit or planned development zoning district for the same purpose and provide a management plan for the incidental shelter use. Sites suitable must be larger than 3,000 square feet and can provide shelter to no more than the total occupancy allowable in the building area designated for an incidental shelter use, but not to exceed more than 50 persons in any 24-hour period. Any person staying at the shelter must eat and sleep within the assembly building and no temporary facilities are allowed.²⁵

²⁵ SAN JOSE MUNICIPAL CODE Ch. 20 § 20.80 part 17

Low-Barrier Navigation Centers

Low-barrier navigation centers, as defined by the state, are shelters focused on moving formerly homeless occupants into permanent housing while case managers connect them to services. Qualifying navigation centers must be equipped with information systems to support transitions to permanent housing and have reduced barriers to entry into a navigation center.

Assembly Bill 101 requires a Low-Barrier Navigation Center be a use by right in areas zoned for mixed use and nonresidential zones permitting multifamily uses if it meets specified requirements, including:

- Access to permanent housing
- Use of a coordinated entry system, i.e., Homeless Management Information System
- Use of Housing First according to Welfare and Institutions Code section 8255. (Gov. Code, § 65662) by right.

Effective June 2021, San José established the Urban Village and Mixed-Use Districts, including Urban Village (UV), Mixed-Use Commercial (MUC), Urban Residential (UR), and Transit Residential (TR) districts²⁶ and deemed low barrier navigation centers as a by right use in those districts. These navigation centers are also by right in the Commercial Pedestrian (CP), Commercial General (CG), Commercial Neighborhood (CN), Public/Quasi-Public (PQP), Downtown (DT), and Pedestrian Oriented districts.²⁷

Transitional/Supportive Housing

In 2010, the City amended its Zoning Code to add definitions for transitional/supportive housing, and allow permanent supportive housing use in Residential, Commercial, Public/Quasi-Public, and Downtown Districts. Transitional housing is treated like a residential use subject to the same residential use standards of the applicable district they are under.²⁸

San José complies with Assembly Bill 2162 (2018), which requires supportive housing be allowed by right in zones where multifamily and mixed use is allowed.²⁹ In 2019, the City codified AB 2162 in the Zoning Code under Chapter 20.195 Ministerial Approvals. The Planning Division has created a separate application for these projects and a webpage with information on how the City processes these types of applications. To date, the City has processed and approved approximately 580 units under the AB 2162 streamlined process.

Single-Room Occupancy Housing

Single-room occupancy (SRO) living unit facilities and residential hotels are subject to discretionary permit processes to ensure specific criteria for approval. A conditional or special use permit is required depending on the zoning district and use type. The districts that allow SROs and the required permits can be seen in *Table 4-4*.

The Specific Use section of Zoning Code Chapter 20.80.1300 outlines the necessary criteria for approval of SRO facilities and residential hotels. Criteria include:

26 SAN JOSE ORDINANCE 30603. Accessed March 2022: <https://records.sanjoseca.gov/Ordinances/ORD30603.pdf>

27 SAN JOSE MUNICIPAL CODE Ch. 20.

28 SAN JOSE MUNICIPAL CODE Ch. 20 § 20.200.1265 & 20.200.1283.

29 CA CODE § 65583. Accessed March 2022: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB2162

- Minimum unit sizes
- Number of persons per unit
- Entrance location and integration
- Management plan
- Laundry facility ratios
- Interior common space requirements
- Kitchen and bathroom facility requirements

Housing for Agricultural Workers

Agricultural workers are defined as persons whose primary income is derived from permanent or seasonal agricultural labor. Permanent farm laborers work in the fields, process plants, or support activities generally on a year-round basis. When workload increases during harvest periods, the labor force is supplemented by seasonal workers, often supplied by a labor contractor. For some crops, farms may hire migrant workers, defined as those whose travel prevents them from returning to their primary residence each evening.

The U.S. Department of Agriculture Census of Farmworkers shows that the number of permanent farm workers in Santa Clara County has increased from 1,696 in 2002 to 2,418 in 2017.³⁰ The state's Current Employment Statistics (CES) for 2021, covering the San José, Sunnyvale, and Santa Clara areas, show that there are as few as 4,100 or as many as 6,100 farm laborers, depending on the season. The 2019 American Community Survey (ACS) estimates approximately 1,500 agriculture, forestry, fishing, hunting, and mining employees 16-years or older living in San José.³¹ Seasonal farm workers on the other hand have decreased from 3,760 to 1,757.³² Seasonal labor decreases are further supported by data from the San José Unified School District, which tracks migrant student enrollment. For the FY2016-17 period, migrant student enrollment totaled 376 and by FY2020-21, it dropped to 36. For this same period, Santa Clara County saw a decrease from 978 to 681.³³ This data suggests that San José shares part of the regional housing need for farm laborers and that seasonal laborers are declining while permanent laborers are increasing.

San José permits temporary farm labor camps for gathering of crops grown on site in the Agriculture District with a conditional use permit. The Employee Housing Act Section 17021.6 requires farmworker housing of up to 36 beds in a group quarter or 12 units be deemed an agricultural use; no discretionary permit, zoning variance, or other zoning clearance is required.³⁴

To date there are no records on file for this type of use either under San José's temporary farm labor camp or the state provision. The City's business license records show no active farm or agricultural uses within the incorporated city and those businesses that were identified as agricultural-related industries

30 California Department of Education, California Longitudinal Pupil Achievement Data System (CALPADS), Cumulative Enrollment Data (Academic Years 2016-2017, 2017-2018, 2018-2019, 2019-2020); "Data Quest." California Department of Education. Accessed March 2022: <https://dq.cde.ca.gov/dataquest/>

31 "Current Employment Statistics (CES)." State of California Employment Development Department. Accessed March 2022: <https://dq.cde.ca.gov/dataquest/dqcensus/EnrEthGrd.aspx?cds=4369666&agglevel=district&year=2020-21>; ACS needs citations (2019 American Community Survey 1-year estimate)

32 U.S. Department of Agriculture, Census of Farmworkers (2002, 2007, 2012, 2017), Table 7: Hired Farm Labor

33 California Department of Education, California Longitudinal Pupil Achievement Data System (CALPADS), Cumulative Enrollment Data (Academic Years 2016-2017, 2017-2018, 2018-2019, 2019-2020); "Data Quest." California Department of Education. Accessed March 2022: <https://dq.cde.ca.gov/dataquest/>

34 CA CODE § 17021.6

are either offices for farm operations or industrial operations that manufacture equipment and machinery for agricultural purposes.³⁵

San José has very few sites with an Agricultural District inside of the Urban Growth Boundary, which may explain the lack of farm labor housing under either the local Zoning Code or under the state provision. Agricultural jobs exist in San José, as data from CES and ACS suggests, and San José largely accomplishes long- and short-term farm labor housing through incidental use of residential property under Section 20.30.110 and 20.80.150 — complying with the Employee Housing Act Section 17021.5 which requires employee housing to be permitted by right in single-family zones for six or fewer employees.³⁶

Factory-Built Housing

Factory-built housing, also commonly known as modular or prefabricated homes, are a burgeoning response to the housing crisis because entire homes or components of homes can be efficiently constructed off-site which makes inclusion of affordable units in projects easier.³⁷ Factory-built housing is defined by the State Health and Safety Code Section, in summary, as any residential building, dwelling, or room, or combination thereof, or building component, assembly, or system which cannot be inspected before installation but does not include a mobile home, recreational vehicle, or a commercial modular.³⁸ San José does not specifically make reference to this type of housing in the Zoning Code but definitions for different dwelling types are sufficiently broad that factory-built housing is not precluded. The City to date has permitted several projects that have incorporated modular construction in combination with affordable or supportive service housing.³⁹

Manufactured Homes and Mobilehome Parks

State law requires that manufactured homes be allowed on lots zoned for conventional single-family dwellings without unique permitting requirements or similar processes compared to other single-family development, including but not limited to roof overhangs.⁴⁰ Other consideration for manufactured homes include the State Accessory Dwelling Unit definition which indicates manufactured homes are a permissible accessory housing type.⁴¹

The state requires that mobilehome parks be similarly permitted on all land planned and zoned for residential use but specifically constrains such a use where residential is allowed under the General Plan designation.⁴² San José's Zoning Code aligns with the state definition of mobilehome and manufactured home and implements the Mobilehome District (R-MH), which is designed to reserve land for the construction, use, and occupancy of mobilehome development. There are no unique standards placed

35 "Business Tax Lookup," City of San José. Accessed March 2022. Search Terms: "Farm%", "Agri%". <https://www.sanjoseca.gov/your-government/departments/finance/business-tax-registration/business-tax-lookup>

36 CA CODE § 17021.5. Accessed March 2022. https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=HSC§ionNum=17021.5.

37 "An Overview of Emerging Construction Technologies," McCoy, Andrew, Yeganeh, Armin. March 2021. Accessed March 2022: https://www.researchgate.net/publication/350975155_An_Overview_of_Emerging_Construction_Technologies

38 CA CODE § 19971. Accessed March 2022. https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=HSC§ionNum=19971#:~:text=%E2%80%9CFactory%2Dbuilt%20housing%E2%80%9D%20means,installation%20at%20the%20building%20site

39 See Second Street Studios, Virginia Studios, McEvoy Affordable Housing Project

40 CA CODE § 65852.3—65852.5

41 CA CODE § 65852.2.

42 CA CODE § 65852.7

on mobilehome park land uses, which include manufactured homes and, in some cases, development regulations are more permissible than single-family zoned properties, see *Table 4-3*. To better align with state law, San José will include a program to expand the Mobilehome Park use to all zoning districts as a permitted use wherever these zoning districts and applicable General Plan land use designations allow residential. In addition, San José has created an ADU program which lists vendors who have standardized construction plans that have been preapproved by the city — of which several include manufactured homes.⁴³

4.4 Response to Constraints

San José made significant efforts to help alleviate constraints on the production of housing for all income levels during the previous 5th Housing Element Cycle. This included the City Council adopting the Housing Crisis Work Plan in 2018 that contained an evolving list of programs and strategies to help encourage housing production and eliminate constraints. To date, the following actions have been taken through this work plan and other avenues to help alleviate constraints:

- Updated the City’s Vision for Downtown San José that included updated environmental analysis to increase residential capacity to shorten timelines for approval.
- Updated Accessory Dwelling Unit and Garage Conversion Ordinance to streamline approval and create more opportunities.
- Created an interactive mapping tool to help identify suitable sites for housing in the City.
- Eliminated commercial space requirements in many affordable housing developments.
- Adopted new downtown and citywide design guidelines to facilitate a consistent and efficient review process of proposed developments.
- Continued to complete urban village plans to allow for new opportunities for housing in commercial corridors.
- Established a dedicated planner that streamlines entitlements and provides additional support to 100% affordable developments that reserve at least 30% of the units for extremely low-income or permanent supportive households.

Constraints to building new housing remain; the most significant being the cost of construction in San José. These costs have only increased during the pandemic and continue to make it extremely difficult for new housing projects to move to construction. However, the City understands that there are measures it can take to help reduce governmental constraints and continues to look for ways it can reduce barriers to housing construction.

Focus group findings. As part of the process to develop this Housing Element Update, the City convened several focus groups of market rate and affordable home builders with experience in San José. Staff then identified strategies to address the barriers raised within these focus groups. The following highlighted strategies included in this Housing Element Update are intended to reduce the identified constraints:

⁴³ “Preapproved ADUs.” San José. Accessed March 2022. <https://www.sanjoseca.gov/business/development-services-permit-center/accessory-dwelling-units-adus/adu-permit-plan-review-process/adu-single-family-master-plan-program>

- **Expand City Ministerial Ordinance** - The City will develop a ministerial process for approving infill housing development that conforms with its General Plan and adheres to certain objective standards.
 - > Discretionary processes coupled with the required environmental analysis add to project timelines and creates uncertainty that creates a barrier to all housing and this new process would help reduce timelines.
 - > Ministerial processing through state streamlining created through SB 35 and AB 2162 has reduced project timelines in San José and other projects could benefit from a similar process.
- **City-Initiated CEQA Analysis** – The City will conduct CEQA analysis for approved urban village plans to speed up review of future individual projects.
 - > Environmental review raised as a barrier by developer focus groups. The San José Downtown Strategy that included plan area environmental analysis was cited as something that was beneficial.
 - > The San José City Auditor in a March 2022 report also recommended this as a strategy worth consideration to help speed up environmental review process.
- **Affordable Housing Building Permit Assistance** – The City will create a new staff position to serve as a single point of contact to help assist affordable housing projects obtain the necessary permits to start construction post entitlement.
 - > Feedback received from experienced affordable developers appreciated the dedicated planner for obtaining their entitlements and wanted a similar contact and process for obtaining the building permits to start construction.
- **Fee Estimation and Administration** – The City will develop clear information on fee estimates based on square feet and make this findable in one location.
 - > Developers indicated that obtaining estimates could be easier.

The City will continue to work to identify and alleviate constraints to reduce barriers to development through its ongoing work to address the City's housing shortage.

4.5 Preservation of Affordable Homes at Risk of Conversion to Market-Rate

Preservation of deed-restricted affordable housing at risk of conversion to market-rate properties is an important strategy that can often provide housing that is less expensive to produce than new construction, is faster to complete and, most importantly, can prevent displacement.

San José is in the process of developing new Preservation strategies. Staff is currently in the process of creating a Community Opportunity to Purchase Program for consideration by the City Council and

is developing its first Preservation Notice of Funding Availability. Future initiatives may include creating a “no net loss” Preservation policy; improving the City’s tracking system for monitoring expiration of affordability restrictions; and creating a new Citywide Housing Balance Report to better analyze and identify problem areas for potential loss of affordable housing.

State law requires local governments to include in their Housing Element an analysis of existing multifamily affordable housing units lost and at risk of conversion to market-rate housing.

Units Lost in the Last 10 Years

Table 4-16 shows the number of affordable units lost from the City’s housing inventory from 2012 to 2022 due to expiring affordability restrictions.

Table 4-16: Apartments with Expired Affordability Restrictions, 2012 to 2022

Name & Address	Type of Assistance	Nonprofit Sponsor ?	Affordability Expiration Date	Total Affordable Units	Total Elderly Units	Total Non-Elderly Units
Carlton Plaza 380 Branham Lane	City issued tax exempt bonds		9/15/2014	28	28	
Foxchase Drive Apartments 1070 Foxchase Drive	City issued tax exempt bonds		11/15/2017	29		29
Fairway Glen 488 Toyon Avenue	Bond / Tax credits		11/17/2017	29		29
Vendome Apartments 155 W Santa Clara St	RDA funded		8/5/2018	32		32
Calvin 3456 Calvin Avenue	City funded	Y	8/29/2020	1		1
Mahalo House 1720 Merrill Drive	City funded	Y	8/29/2020	6		6
Homebase 865 Calhoun St.	City funded / HUD 202	Y	9/28/2020	12		12
Colonnade 201 S 4th Street	City funded		9/30/2020	16		16
1726 Ross 1726 Ross Circle	City funded	Y	12/4/2020	4		4
Cape Cod Court 3680 Cape Cod Court	City funded		8/15/2021	28		28
1713 Ross 1713 Ross Circle	City funded	Y	9/1/2021	4		4
1731 Ross 1731 Ross Circle	City funded	Y	9/1/2021	4		4
Barker 3825 Barker Drive	City funded	Y	9/1/2021	4		4
Branham 1579 Branham Lane	City funded	Y	9/1/2021	2		2
Curtner 1824 Curtner Avenue	City funded	Y	9/1/2021	1		1
Donna 1794 Donna Lane	City funded	Y	9/1/2021	4		4
Minnesota 1231 Minnesota Avenue	City funded	Y	9/1/2021	1		1
Miraido Village Mixed-use 566 N Sixth Street	Bond / Tax credits		7/20/2022	36		36
Almaden Lake Village 1045 Coleman Avenue	City issued tax exempt bonds		3/27/2012?	50		50
TOTAL EXPIRED UNITS:				291	28	263

**Note: "City funded" includes assistance from the former San José Redevelopment Agency*

The City lost 291 deed-restricted affordable homes from 2012 to 2022, out of which 28 were affordable to seniors. About 41% (119) of the affordable apartments that converted to market-rate were assisted with City funds. The other 172 units (59%) were funded only through Private Activity Bonds (bonds) and/or Low-Income Housing Tax Credits (tax credits). Approximately 15% (43 apartments) were sponsored by nonprofit organizations, while the vast majority (85%) of apartments lost to affordability were sponsored by for-profit developers.

Units Expiring in the Next 10 years

Table 4-17 shows the number of restricted affordable units at risk of conversion to market-rate in the next 10 years, by 2032.

The assessed risks of affordability loss – High (H), Moderate (M), Low (L) – are based on the following:

- California Housing Partnership Corporation's 2022 Affordable Homes at Risk Report, https://chpc.net/?sfid=181&_sft_resources_type=preservation
- National Housing Preservation Database, <https://preservationdatabase.org/>
- San José Housing staff assessment.

Table 4-17: Apartments with Affordability Restrictions Anticipated to Expire 2012 to 2032

Name	Type of Assistance Received*	Nonprofit Sponsor ?	Affordability Expiration Date	Total Affordable Units	Total Elderly Units	Total Non-Elderly Units	Risk
Kimberly Woods Apartments 925 Willowleaf Drive	City issued bonds		12/29/2024	42		42	L
Arbor Apartments - 1582 Kooser Road	HUD assisted		8/31/2025	122		122	H
Villa Torino - 29 West Julian Street	City funded		9/30/2025	85		85	H
Almaden Garden Apartments 947 Branham Lane	HUD assisted		4/30/2026	36		36	H
San Jose Apartments 1500 Cunningham Avenue	HUD assisted		9/30/2026	214		214	H
Willow Lake - 1331 Lakeshore Circle	Inclusionary		8/4/2027	12		12	H
YWCA Villa Nueva 375 S. 3rd Street	City funded	Y	3/4/2028	62		62	M
Enclave / Siena at Renaissance 4349 Renaissance Drive	City funded & Inclusionary		4/13/2028	271		271	M
Masson Building Rehabilitation 161 West Santa Clara Street	80% redevelopment funds		7/31/2028	4		4	M
Giovanni - 85 S. 5th Street	City funded & HUD 202	Y	11/12/2028	24	24	0	M
Hoffman – 5629 Hoffman Court	City funded	Y	10/28/2029	4		4	
Monterey Grove 6100 Monterey Road	Inclusionary		11/4/2029	34		34	
Burning Tree - 239 Burning Tree	City funded		4/1/2030	1		1	
Waterford Place - 1700 N. 1st Street	Inclusionary		4/5/2030	36		36	
Market Gateway Housing 535 S. Market Street	Inclusionary		4/21/2030	22		22	
Village @ Museum Park 465 W. San Carlos Street	Developer agreement		2/1/2031	19		19	
101 San Fernando 101 E. San Fernando St.	Inclusionary		8/29/2031	65		65	
North Park The Cypress I 65 Rio Robles East	Inclusionary		10/29/2031	35		35	
North Park The Cypress II 75 Rio Robles East	Inclusionary		10/29/2031	37		37	
College Park 190 Ryland Street	Inclusionary		12/14/2031	46		46	
Casa Camino - 96 South 10th Street	City funded		4/1/2032	4		4	
Santa Familia - 4984 Severance Drive	City funded	Y	4/28/2032	79		79	
Avenida Espana Gardens 181 Rawls Court	City funded & Tax Credit	Y	10/26/2032	84	84	0	
Moreland Apartments 4375 Payne Avenue	HUD assisted		2/1/2019	160		160	M
Las Casitas - 632 N. Jackson Avenue	HUD assisted		2/28/2021	168		168	H
Dent Commons - 5363 Dent Avenue	Tax credits	Y	3/5/2021	23		23	

Name	Type of Assistance Received*	Nonprofit Sponsor ?	Affordability Expiration Date	Total Affordable Units	Total Elderly Units	Total Non-Elderly Units	Risk
Lion Villas - 2550 S. King Road	Tax credits		5/24/2029	109		109	
N/A - 1810 Alum Rock Avenue	HOME assisted	Y	8/4/2026	24			
TOTAL AFFORDABLE UNITS AT RISK OF EXPIRING:				1,826	108	1,718	

*Note: "City funded" includes assistance from the former San José Redevelopment Agency.

By 2023, 1,826 units are at risk of conversion, out of which 108 units (6%) are affordable to seniors. About 34% (618 units) of these units received City funding, while the others received funding only from tax credits, bond issuances or HUD, or were made affordable through inclusionary housing requirements or developer agreements. Only approximately 17% (304 units) of the affordable units at risk of conversion were sponsored by nonprofit developers, who are likely more amenable than for-profit sponsors to extending apartments' affordability restrictions given their mission and nonprofit status. This indicates that the risk of conversion to market-rate is higher for the remaining 1,522 apartments (83%) owned by for-profit owners.

Cost of Preserving Affordability

Based on a study of recent Preservation projects and New Construction projects, the City estimates that there are a range of total costs that are plausible for Preservation estimates. However, San José's data indicates that preservation of an existing affordable home is considerably less expensive than building a new affordable home.

The first Preservation cost estimate both physically preserves the apartments and creates new long-term affordability restrictions. This estimate assumes an ownership transfer of existing affordable apartments followed by a complete financial restructuring. The restructuring includes resyndication with new tax credits, new conventional debt, significant rehabilitation, extension and recasting of existing City loans, and new recorded affordability restrictions of at least 55 years. This 'full Preservation' scenario recently has cost approximately \$556,000 per unit. This is a weighted average among seven developments, with the total cost ranging from approximately \$303,000 to \$732,000 per unit.

The second Preservation cost estimate focuses on physical preservation of apartments and short extensions of affordability without a change in ownership. This estimate assumes refinancing of existing conventional loans, some rehabilitation, no resyndication or ownership change, no recasting of an existing City soft loan terms, and short extensions of recorded affordability restrictions. These transactions averaged \$170,000 at the time of simple refinancing. This is a weighted average among three developments, with the total cost ranging from approximately \$96,000 to \$590,000 per unit. Given this small sample size and the wide variation in rehabilitation scopes among the samples, this estimate will no doubt change over time.

The New Construction cost estimate is a weighted average of six recent developments, with the approximate total development costs ranging from \$514,000 to \$855,000 per affordable apartment. It is worth noting that two of the six developments were built on land acquired years prior by the City or former redevelopment agency before land use entitlements were approved. Therefore, land costs for two of the six sample developments are likely lower than usual.

For all transactions, it is worth noting that given recent significant increases in construction costs, these figures are likely lower than current costs would be. *Table 4-18* contains more information.

Table 4-18: Per Unit Preservation Costs vs. New Construction

Method of Creating or Preserving Affordability	Acquisition Cost (incl. land cost)	Rehab/ Construction Cost	Financing / Other Costs	TOTAL COST
Acquisition/Rehab and Financial Restructuring with Ownership Change	\$382,000	\$69,000	\$105,000	\$556,000
Rehab and Refinancing with No Ownership Change	N/A	\$31,000	\$139,000	\$170,000
New Construction	\$48,000	\$441,000	\$176,000	\$664,000

Based on these estimates, which are likely lower than current costs, it would cost between \$0.3 billion (if all units refinanced) to \$1 billion (if all units changed ownership) to preserve 1,826 units. Alternatively, it would cost at least \$1.2 billion for the new construction of 1,826 units to replace those that are at risk of expiring in the next 10 years. For a listing of possible City sources of funding to preserve at risk affordable housing, please see Appendix D.

This data confirms that preservation of existing affordable homes is a less expensive alternative than new construction. In addition, given the limited availability on tax credit and bond awards for new affordable homes, preservation may be more feasible to finance than new construction.