

# 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 4.3.6).

- **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](#).
- [Requests for lesser densities –the majority of approved projects on sites in the 5<sup>th</sup> Cycle Housing Element inventory were approved at or above the densities planned. Out of 73 sites, eight sites were approved with projects at densities below those planned for the 5<sup>th</sup> Cycle Inventory. It should be noted that the reduced densities were proposed by the project applicant and not due to constraints in terms of zoning, or land use controls. The table below identifies the sites and other characteristics of those projects.](#)

5th Cycle ID	PROJECT NAME	FILE NUMBER	TRACKING APN/ADDRESS	PLANNED UNITS/ DENSITY	ACRES	NEW DEVELOPMENT FILE NUMBER	New Units	New Project Acres
1	San Pedro Square	H12-020	25932044 171 W. Julian Street	408 (190 du/ac)	2.14	N/A	381 (162 du/ac)	2.35
6	N/A	N/A	25931070 255 W Julian Street	158 (175 du/ac)	1	SP21-037	0	1.79
5	N/A	PDC06-125	26426006 341 Delmas Ave	144 (175 du/ac)	0.82	H15-046	120 (171 du/ac)	0.70
10	Newbury Park Mixed Use	PDC07-015	25404076 1855 Dobbin Dr.	742 (80 du/ac)	16.36	PD14-029	131 (22 du/ac)	5.88
9	Newbury Park Mixed Use	PD13-023	25404076 1745 Dobbin Dr.	230 (80 du/ac)	3.08	PD14-044	49 (32 du/ac)	1.50
18	N/A	N/A	57754013 5827 Brasilia Way	16 (2du/ac)	7.88	PD16-014	10 (1.25 du/ac)	7.94
16	N/A	N/A	58311094 7257 Gold Creek Way	4 (2 du/ac)	1.8	PDA78-061-02	(1.25 du/ac)	0.80
7	N/A	N/A	25946109 267 Delmas Ave.	294 (175 du/ac)	1.68	SP16-010	(76.5 du/ac)	0.47

## 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 4.4.

### 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.

For affordable housing construction, the availability of financing has been constrained by level of subsidy available. In recent years, the competitiveness in obtaining funds has greatly increased especially for Low-Income Housing Tax-Credit (LIHTC) financing making it more challenging for projects to obtain sufficient funds to start construction. Developments in San José have had to apply multiple times to receive a LIHTC award delaying the ability to start construction from six months to over two years in some instances. San José, and the larger Bay Area as a region, were recently disadvantaged due to scoring that elevated areas where construction costs were lower. This added to the difficulty in obtain financing. The City advocated for changes in the California Debt Limit Allocation Committee (CDLAC) program guidelines to better position affordable housing developments in San José for future allocations of tax-exempt bonds and tax credits. Some of these changes were implemented in 2022 and in the coming years the City will be tracking the overall impact on affordable housing developments in San José and the Bay Area region as a result of these changes.

## 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 was completed in November 2022 by the City's consultant, Century Urban. This 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. The layering on of these additional funding sources adds time, which adds costs due to escalating construction costs. Additionally, these new funding sources may add on additional requirements to the project that can take time incorporate or add additional expense.



**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.*

### 4.2.3 Resident Opposition

As in many other cities in California and the United States, proposals for housing development in San José are often opposed by residents who raise various objections. These objections can be on procedural grounds (e.g., insufficient public consultation<sup>1</sup> or violation of CEQA<sup>2</sup>) or concerns about project impacts (e.g., less parking and increased traffic<sup>3</sup>, increased crime<sup>3</sup>, reduced property value,<sup>4</sup> etc.). This opposition can result in longer review periods, additional political intervention, and delayed construction through appeals after City approval. This in turn increases project risks and costs in multiple ways: it jeopardizes financing (private or public) that in turn affects the time value of money, and it pushes private developers toward more expensive projects with more favorable rates of return.<sup>5</sup> It also often results in reduction in project unit delivery (either preemptively or due to backlash), eroding the ability of the City to deliver on its RHNA goals. Therefore, significant and sustained opposition by residents is a constraint on new housing.

To address this constraint, the Housing Element (Chapter 3, Strategy P-7) proposes the development of a City Ministerial Approval Ordinance that would allow the Director of Planning, Building, and Code Enforcement to approve certain projects that meet objective standards in a defined timeframe, without public approval hearings. The projects would still be subject to Council Policy 06-30 (Public Outreach for Development Projects) to ensure that residents of the surrounding neighborhood are aware of the proposal and have opportunities to voice any concerns and ideas for design improvements.

The Housing Element (Chapter 3, Strategy P-7) also proposes additional CEQA streamlining measures to reduce project timelines and reduce the risk of lawsuits against projects, in addition to increased outreach and education on future housing developments for currently unhoused people. Regarding outreach and education, these efforts will focus on the root causes and different housing approaches for homelessness, controversial topics related to equity and protected classes, and areas experiencing growth.

The intent of these interrelated actions is to increase predictability in the development review process and to support housing construction consistent with the General Plan, while still enabling transparency, public involvement, and environmental protection as part of the review process. These are all important values that the City balances in pursuit of housing goals.

## 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

<sup>1</sup> Ramona Giwargis, *San Jose Mercury News*, August 12, 2016, "San Jose council Oks controversial homeless housing project," <https://www.mercurynews.com/2016/06/28/san-jose-council-oks-controversial-homeless-housing-project/>

<sup>2</sup> Grace Hase, *San Jose Mercury News*, July 28, 2022, "San Jose: Residents sue city over impact a Whole Foods store would have in El Paseo shopping center redevelopment," <https://archive.ph/BrpNK>

<sup>3</sup> Emily Deruy, *San Jose Mercury News*, August 21, 2019, "San Jose senior housing faces backlash from neighbors," <https://www.mercurynews.com/2019/08/21/senior-housing-development-faces-backlash-from-neighbors/>

<sup>4</sup> Art Duran, *Change.org*, "No To Homekey Proposal in D2: Residence Inn on San Ignacio Avenue," <https://www.change.org/p/no-to-homekey-proposal-in-d2-residence-inn-on-san-ignacio-avenue>

<sup>5</sup> Jenny Schuetz, *Brookings*, January 17, 2020, "Who's to blame for high housing costs? It's more complicated than you think," <https://www.brookings.edu/research/whos-to-blame-for-high-housing-costs-its-more-complicated-than-you-think/>

*City of San José Draft Housing Element, rev. June 2023*

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 allows 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.

The Urban Village strategy is a critical path to achieve multiple interconnected goals (environmental sustainability, transit supportive communities, fiscally sound city, etc.) and these areas also provide for significant residential growth capacity planned in the Envision General Plan 2040. Urban Village planning is critical for the City to achieve residential growth envisioned in the General Plan.

The urban village planning process however can be a constraint. Urban Village planning requires significant staff resources and advanced planning. Since the adoption of the General Plan in 2011, staff has planned 14 urban villages areas—roughly 1.2 every year. At this rate the City cannot reasonably expect to plan the remaining urban village areas (46) within the time frame of the current General Plan unless several changes are implemented to streamline the process. While housing development may proceed in unplanned urban villages through General Policies IP-5.10 and IP-5.12, these policies do not provide opportunities for residential and mixed-use residential development outside of 100% affordable developments and "Signature" (or outstanding/catalyst) projects. Essentially, unplanned urban villages are not primed yet to

facilitate residential development.

The total staff and consultant cost to prepare an urban village plan ranges from \$350,000 to \$850,000, and the time to prepare ranges from 18 months to 2.5 years. Pursuant to General Plan Policy IP-5.15, staff is encouraged to “actively pursue outside funding opportunities for the Village planning process.” However, given the limited Planning and fiscal staff positions in the Department, as well as the complexity of administering federal and state grants, it is inefficient for the Department to seek grant funds to wholly support urban village planning processes. In practice, planners are spending too much time administering grants than engaging in real, land use planning. Given this, as noted in Chapter 3 Housing Goals & Strategies, staff is considering amending Policy IP-5.15 to encourage the City to identify a stable, internal funding source to cover the majority of the planning process. Staff will continue to seek grants to support portions of the work, however, cannot rely on it as the only source.

In terms of streamlining the process, staff recommends including a program in the Housing Element (Chapter 3, Strategy P-40) that will reevaluate the urban village strategy including but not limited to: reducing and consolidating urban village areas, reevaluating the required components of urban village plans, and accelerating the timeline while still supporting community engagement throughout the process. One example of this type of streamlining effort is the development of the Capital Caltrain Station Area plan (also an urban village plan area) that is laying the groundwork for an expedited planning process, while still providing opportunities for public engagement.

### 4.3.2 Zoning Districts

Title 20 of the San José Municipal Code ([www.sanjoseca.gov/municipalcode](http://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.

The City’s zoning ordinance regulates the uses within each zone and sets the standards for development including height, setback, and open space requirements, amongst other regulations. The zoning ordinance includes a variety of standard land use controls which are meant to ensure the orderly development and design of the build environment. Examples of standard land use controls include:

- **Minimum lot area** – The minimum lot area is meant to ensure uniformity of development patterns as well as providing for adequate space for development to meet building and fire safety codes. The zoning ordinance provides exceptions for smaller lots (Section 20.30.230 explains that parcels can be as small as 3,000 SF).
- **Setbacks** – The setback regulations are meant to be free and unobstructed from structures, in residential zoning districts, setback areas effectively regulate open space. Each zoning district chapter includes exceptions to setback standards, exceptions are typically related to architectural features/projections. ADUs and accessory structures may be permitted in setback areas or with reduced setbacks.
- **Height** – Each zoning district includes regulations which limit building height. The heights are meant to facilitate the scale and intensity of the allowable density on the site. Multifamily Residential (RM) is one example of a zoning district which is has potential to constrain development because the building height is low in relation to the types of uses permitted in the zone. However, as further explained below, this zoning district is being phased out with a more permissive, denser district. There are additional height regulations as discussed in the *Specific Height Restrictions Chapter*, as discussed

later in this document.

- **Density/Floor Area Ratio (FAR)** – All zoning districts conform with specific density and FAR regulations which are established by the General Plan and meant to facilitate the city’s vision of dense, walkable communities. Density and FAR effectively regulate the mass of the building on site; density is typically expressed in dwelling units per acre (du/ac). Single Family Homes in R1 zones are generally limited to 0.45 FAR and can increase the FAR through discretionary process. Accessory structures and ADUs are not counted as part of the FAR in Residential zones. The Urban Village and Mixed Use zoning districts are unique in that the zoning ordinance includes standards for density and FAR.
- **Open Space** – Open Space regulations for multifamily and mixed use developments in Urban Village and Mixed Use zoning districts are divided into two categories, common open space and private open space (Section 20.55.102). The minimum open space requirements for prospective development are based on the number and type of residential units proposed. There are multiple exceptions to open space requirements for example, projects which include less than 15 dwelling units and projects which are within a quarter mile of existing public open space can eliminate their obligation. There are also opportunities to reduce open space requirements in exchange for providing “POPOS” or Public Open Space on site. Staff included the open space regulations in the test fit analysis and demonstrated that the minimum requirements and exceptions allowed were feasible for development. In addition to the test-fit analysis, staff revised the regulations based on feedback from the public and local developers including the Building Industry Association (BIA). Public comments during the community meetings included increasing the minimum open space requirements in light of the pandemic (and increased demand for open space). While the BIA was opposed to this request, staff was able to find a middle ground.
- **Parking** – In December 2022 the City Council amended parking regulations throughout the city and became the first major city in the bay area to eliminate parking minimums. The ordinance is set to become effective on April 10, 2023. Covered Parking and Guest Parking is no longer required for residential development, and in most cases parking regulations were completely eliminated.

In addition to standard land use controls the zoning ordinance includes two additional chapters dedicated to specific regulations for heights and land uses.

- **Specific Height Restrictions Chapter** – The Specific Height Restrictions Chapter provides guidance for geographically based height restrictions, largely related to sites with proximity to the San José Mineta International Airport. The Airport Influence Area encompass a large portion of Downtown, The Diridon Station Area, and North San José, for the most part these areas are constrained by FAA regulations. This section also includes regulations for areas in Old Edenvale, New Edenvale, Coyote Planning Area, North First Street Transit Village, and Rincon South Urban Village.
- **Specific Use Regulations Chapter** – Similarly, the Specific Use Regulations Chapter provides regulations for various types of residential development projects including Co-living, SROs, Emergency Residential Shelters, Safe Parking, Incidental Shelter, Live/work units, and Hotel Supportive Housing.

## Definition of Family

To ensure no individual or group is excluded from a variety of housing, the Zoning Ordinance (Section 20.200.370) 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.<sup>6</sup> The R-M district, however, is a legacy zoning District that is being phased out and replaced with a more permissive district. The City recently 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

### ~~HOW ZONING DISTRICTS ALLOW FOR VARIOUS HOUSING NEEDS~~

~~Municipal Code Chapter 20 is considered the Zoning Code~~

~~[www.sanjoseca.gov/MunicipalCode](http://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.~~

<sup>6</sup> CA CODE § 65583.2(c)(3)(B)(iv)

described in the section on Urban Village and Mixed-Use districts.

**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.<sup>7</sup> 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.<sup>8</sup>

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.

<sup>7</sup> CA CODE § 65582(g)

<sup>8</sup> San José Municipal Code Ch. 20 § 20.30.110



**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.

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<sup>9</sup>. 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.

The purpose of *Table 4-4* is to compile all other zoning districts which permit some form of residential development. The standards for development for the Commercial, Downtown, Pedestrian Oriented, and the Urban Village and Mixed Use Zoning Districts are compiled in table above. Commercial zoning districts allow residential development under specific circumstances outlined by General Plan Policies IP 5-10 and IP 5-12 which allows residential/mixed use or 100% affordable housing development projects to move forward in advance of the Urban Village Planning Process and/or outside of planned growth areas.

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<sup>9</sup> CA CODE § 66452.6, 65852.21, 66411.7. Accessed March 2022: [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB9](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB9)

**Table 4-4: Development Standards for All Other Zoning Districts**

ZONING DISTRICT	UNITS PER ACRE	MIN. LOT AREA (SF)	MAX. ADU	MAX. JUNIOR ADU	MAX. HEIGHT (FT)	SETBACK STANDARDS				
						FRONT	SIDE INTERIOR	SIDE CORNER	REAR INTERIOIR	REAR CORNER
CP	n/a	6,000*	N/A	N/A	50*	10 ft. max.*	none*	none*	25 ft. min*	25 ft. min*
CN	n/a	6,000*	N/A	N/A	50*	10 ft. min.*	none*	12.5 ft. min.*	none*	none*
CG	n/a	1 acre**	N/A	N/A	65	15 ft. max.	none	12.5 ft. min.	none	none
PQP	n/a	6,000	N/A	N/A	65	10 ft. max.***	10 ft. min.***	10 ft. min.***	10 ft. min.***	10 ft. min.***
DC	800	N/A	N/A	N/A	FAA Reg.	N/A	N/A	N/A	N/A	N/A
DC-NT1	Refer to Table 4-5: Chapter 20.70, Section 20.70.220, Table 20-150									
UV	55-250	6,000	N/A	N/A		10 ft. max.	10 ft. max.	10 ft. max.	10 ft. min.	10 ft. min.
MUC	Max 50****	6,000	N/A	N/A	85	10 ft. max.	10 ft. max.	10 ft. max.	10 ft. min.	10 ft. min.
MUN	Max 30	Refer to Table C & Table D: Table 20-137								
UR	30-95	6,000	N/A	N/A	135	10 ft. max.	10 ft. max.	10 ft. max.	10 ft. min.	10 ft. min.
TR	50-250	6,000	N/A	N/A	270	10 ft. max.	10 ft. max.	10 ft. max.	10 ft. min.	10 ft. min.
MSG	Refer to Table 4-9 & Table 4-10: Table 20-152									
MSC										
<p>*or as established in approved Urban Village Plan</p> <p>** (none if lot is located in a shopping center with shared access and shared parking among the lots)</p> <p>*** less than 10 if established in approved development permit</p> <p>**** only applies to mixed use, 100% residential isn't allowed</p>										

### 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 2024.

### Downtown DC and DC-NT1 Zoning Districts

The Downtown Commercial (DC) and Downtown Neighborhood Transition (DC-NT1) districts allow a variety of residential uses at high densities. The DC District offers some of the greatest flexibility in relation to other areas of the City; as noted in Table A, there are no minimum setbacks required and maximum allowable building height is limited only by Federal Aviation Administration (FAA) regulations and the allowable density in downtown is allowed at 800 du/ac, the highest density range of any zoning district. The DC-NT1 zoning district, is geographically specific to a portion of the downtown area which is directly adjacent to the Market-Almaden Conservation Area. The area is characterized by mostly single family residences of Victorians and Craftsman bungalows dating from the late 1800s and early 1900s. The Market-Almaden Conservation Area, surrounded by the Downtown core, is located just west of S. Market Street bounded by Almaden Avenue on the west, Balbach Street on the north and W. Reed Street and I-280 on the south. As shown in Table 4-5, the development standards for DC-NT1 include references to specific streets in the downtown area, and they effectively act as daylight/stepback planes to protect the conservation area, which is comprised of a mix of R-1-8 and RM zoning, where building height are limited to 30 feet. The standards are meant to both provide sensitivity to the historic area and also to provide certainty to developers, by providing clear direction on allowable building heights.

**Table 4-5: DC-NT1 Development Standards (Muni Code, Table 20-150)**

Location	Height Limit*	Setback*	Special Conditions*	Supplemental Standards*
Balbach (south side, between Almaden Avenue and Almaden Boulevard)		10 feet	50-foot setback required for portions of buildings above 70 feet	
Almaden Avenue (west side between Balbach and Reed Streets)	35 feet or 2 - 1/2 stories			
Almaden Boulevard (east side between Almaden Blvd. and Almaden Avenue between Balbach Street and I-280)	70 feet (to a maximum depth of 100 feet)		Planning Commission may allow heights up to 100 feet to a maximum depth of 100 feet from Almaden Blvd and at a minimum distance of 50 feet from Balbach, if design guidelines are met	Portions of buildings higher than 70 feet shall be: 1. Limited to 100 feet in length and a diagonal no greater than 125 feet. Shorter side to be generally parallel to Almaden Blvd. 2. Set back one foot from common property lines for each two feet in excess of 70 feet
Market Street (west side, Balbach to Pierce)	60 feet	Front and side setbacks not permitted		Setbacks allowed for recessed entries
Market Street (west side, Pierce to Hwy. 280)	120 feet	Minimum 10 feet to residential property line		Height may not exceed a slope of 3:2, as measured from ground level at the adjacent residentially zoned property line
* Where no standard is specified, the development standards of the DC District shall prevail				

**Table 4-6: 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 &gt;

**CONTINUED - Table 4-6: 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
<b>DOWNTOWN DISTRICTS</b>	<b>DC</b>	<b>DC-NT1</b>				
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

The Urban Village and Mixed-Use Zoning Districts were adopted by the City Council on May 25, 2021. Staff developed six new zoning districts: Urban Village Commercial (UVC), Urban Village (UV), Mixed-Use Commercial (MUC), Mixed-Use Neighborhood (MUN), Urban Residential (UR), and Transit Residential (TR). As part of the process of creating the development standards, staff engage the Urban Land Institute (ULI) and local members of the development community to run a test fit analysis which also included the new Citywide Design Standards to ensure that the densities allowed by the General Plan were achievable and feasible based on the standards of development. As shown in Table A, the Urban Village and Mixed-use zoning districts offer a high degree of flexibility with regards to uses, with Multifamily and Mixed Use being Permitted uses. The heights and setback were crafted to ensure the maximum density is achievable without the need for density bonus or other waivers.

The Urban Village planning process emphasizes 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 Urban Village and Mixed-Use zoning districts help to implement this strategy, and provide clarity and certainty for developers looking to build in growth areas.

As a charter city, the City of San José historically had not been required to have zoning districts and General Plan Land Use designations in alignment. The passage of Senate Bill 1333 in 2018 became the impetus for all charter cities to match their zoning districts and land use designations. The alignment work includes the rezoning of properties and is currently underway. This work is expected to be a two- to three-year process.

The Mixed-Use Neighborhood General Plan land use designation is a lower density designation than the other mixed use zoning districts. It calls for a variety of residential development types ranging from single-family homes, duplexes, triplexes, townhomes, multifamily homes, and small mixed-use development or 100% commercial development. Mixed Use Neighborhood is generally designated in areas where it provides a transition between denser development and single-family neighborhoods. The Mixed-Use Neighborhood zoning district includes additional regulations in order to address the variety of development types which are allowed, which include a higher degree of detail to provide development standards based on the type of development being proposed.

In order to address the high variation in housing product types, staff has provided two ways to facilitate a variety of development product types. The first is to offer two pathways for standards of development: Conventional and Alternate. For the purposes of this chapter Conventional standards are defined as being applicable to developments where all lots have frontage on and direct access to a public street, and where all buildings provide a setback to property lines. Alternate standards are applicable to small-lot development characterized by access to lots provided off courts, driveways, and private streets, and/or with buildings without setbacks to property lines. As noted in *Table 4-7* the two options provide different pathways for facilitating development based on specific criteria related to the proposed project, such as lot frontages and lot size and those factors directly correlate to the FAR which is allowed on site. A developer may select either set of standards to use based on what is a better fit for the type of development being proposing.

**Table 4-7 Mixed Use Neighborhood Development Standards**

Regulations		Conventional		Alternate
Minimum Lot Area (excluding Accessory Dwelling Units)		1,452 square feet per unit		No Minimum. Entire project must be covered by a single development permit. Cannot exceed 30 dwelling units/acre
Lot Frontage Requirements to Public Right-of-Way		Requires at least 30 ft. of contiguous frontage on a public right of way, with vehicular and/or pedestrian access to the right-of-way.		None required, provided all lots have access from a public right-of-way provided by easement
		<b>Floor Area Ratio</b>		
100% Commercial FAR		0.25-2.0		100% Commercial development must follow Conventional Standards
Mixed use	FAR	0.25-2.0		
	du/ac	Max. 30		
100% Residential du/ac		Max. 30		
FAR for Single- family Detached Residences, not including ADUs		3,000 sq. ft. or less	0.6 Max FAR	Max. 2.0 across the entire development site
		3,000 – 6,000 sq. ft.	0.5 Max FAR	
		6,000 or greater	0.45 Max FAR	

The second way the City is addressing variation in development product types in the proposed Mixed Use Neighborhood District is by requiring different development standards in order to control the form of various development product types, as shown in *Table 4-8*. For example, MUN has a maximum 35 ft height limit for Single family homes and duplexes which is consistent with lower density residential (R-1-8, R-1-5). Townhouses in the MUN zone have a maximum height of 40 ft and Multifamily or mixed use development max out at 45 ft. The additional standards for the Mixed Use Neighborhood Zoning District are particularly important as this is the only mixed use zoning district that supports development of single-family homes which are not subject to the Citywide Design Standards and Guidelines.

**Table 4-8: MUN Additional Development Regulations**

	Additional Development Regulations for Conventional and Alternate			
	Single-Family dwelling unit (Detached)	Two-family dwelling unit (Duplex)	Townhouse or Rowhouse	Multiple Dwelling, Mixed use, or 100% Commercial
Max. Building Height	35 ft.	35 ft.	40 ft.	45 ft.
Max. Number of Stories	2.5	2.5	3	4
Private Open Space Requirements for 100% Residential or Mixed use Development	400 sq. ft. per unit	300 sq. ft. per unit	300 sq. ft. per unit	60 sq. ft. per unit
	Minimum width for Private Open Space shall be 15 ft.			
Common Open Space Requirements	Mixed use Development which includes 15 or more units shall provide Common Open Space at a minimum of 75 sq. ft. per residential unit			
	100% Residential Development which includes 15 or more units shall provide Common Open Space at a minimum of 100 sq. ft. per residential unit			

### Pedestrian Oriented Zoning Districts

The Pedestrian Oriented Zoning districts, MS-G Main Street Ground Floor Commercial (MS-G) and the MS-C Main Street Commercial (MS-C), are a combination of traditional zoning and form based zoning code standards and act as a hybrid of design standards and development standards which are specific to a geographic location in San José, located along Alum Rock Avenue. These districts serve as the basis for the Alum Rock Urban Village. MS-G and MS-C are examples of mixed use zoning districts which require a Conditional Use Permit for Multifamily and Mixed Use Development, unlike the Urban Village and Mixed Use Zoning Districts.

The MS-G and MS-C zoning standards are unique to this neighborhood and crafted specifically for the properties included in the urban village, *Table 4-9* shows how these districts include build to lines and setback regulations, which are not seen in other zones and do not apply anywhere else in the city. These regulations were crafted specifically for this area of the city and are meant to ensure development is built in compact urban form.



**Table 4-9: Pedestrian Oriented Zoning Development Standards**

<b>Table 20-151 MS-G and MS-C Main Street Districts Required Build-to-Lines and Setbacks</b>				
Regulations	Main Street or Major Cross Street Frontage	Minor Cross Street Frontage	Residential Street Frontage	Notes and Sections
Front build-to-line	5 ft. from front lot line	2 ft. from front lot line	15 ft, from front lot line	Section 20.75.110B. and C.
Front setback	10 ft. maximum	10 ft. maximum		
Percent of building façade that is required to be located on the build-to-line or set back no more than one foot from the build-to-line <sup>1</sup>	70% minimum	30% minimum		
Side interior setback <sup>2</sup>	None	None		
Minimum setback from any lot line adjacent to a property located in a residential zoning district <sup>3</sup>	15 ft.	15 ft.	15 ft.	Section 20.75.120A.
Setback from any other lot line	None	None	None	Note 1
Source: 20.75.110 Building placement. A. Building placement and building setbacks shall conform to the regulations set forth in Table 20-151.				

As illustrated in *Table 4-10*, the Pedestrian Oriented Zoning Districts have a variety of height restrictions, which are dependent on the type of street they are located on and their proximity to other, lower density residential uses. For example, there is a 35 ft maximum height within 20 ft of residentially zoned property or 40 ft of a residential street. These regulations are meant to act as a stepback/daylight plane in order to provide a transition between the higher intensity development and the neighboring low density residential zones.

**Table 4-10: Pedestrian Oriented Zoning Districts – Stories & Heights**

<b>Table 20-155 MS-G and MS-C Main Street Districts Maximum Stories and Height</b>		
Category	Requirement	Notes and Sections
Maximum allowed stories	5 stories above grade	
Maximum allowed height <sup>1</sup>	75 feet above grade	Section 20.75.160B
Maximum allowed height within 50 feet of property located in a residential zoning district allowing 8 units or less per acre <sup>2</sup>	35 feet maximum height within 20 feet of the residentially zoned property, increasing by one foot for every one additional foot of setback	Section 20.75.160.B
Maximum allowed height within 50 feet of property located in a residential zoning district allowing 9 to 30 units per acre <sup>2</sup>	45 feet maximum height within 20 feet of the residentially zoned property, increasing by one foot for every one additional foot of setback	Subsection 20.75.160.B
Maximum allowed height within 40 feet of a residential street	35 feet above grade	
20-156		
Source: 20.75.160 Building height and story regulations. A. Maximum height and stories. All buildings and structures in the MS-G and MS-C main street districts shall be limited to the number of stories and maximum height as set forth in Table 20-155.		

### 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<sup>10</sup>. 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 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.

#### 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](http://www.sanjoseca.gov/ADUs)*

<sup>10</sup> CA CODE § 65852.2

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](http://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**

In recent years, San José has committed to climate initiatives such as the International Paris Agreement, which is further supported 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 been evaluated since 1965. Previous parking requirements were 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.

Historically, the Zoning Code has regulated the provisions for off-street parking and loading<sup>11</sup>, however, on December 6, 2022 the San José City Council adopted sweeping reforms to parking regulations which included eliminating parking minimum requirements across uses and zoning districts, in addition this update introduced new Transportation Demand Management (TDM) requirements. 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 effective date of this ordinance work is April 10, 2023 after which the new parking regulations will take effect.

*Table 4-11* below shows examples of some residential uses which were previously regulated by the “Parking and Loading” regulations. As noted in the table below many of the residential uses were required to provide parking based on the number of bedrooms in each unit, one exception to this rule was One-family dwelling which was only required to have two covered parking spaces, regardless of the number of bedrooms. Effective April 10, 2023, there are no parking minimum parking requirements for residential uses.

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<sup>11</sup> SAN JOSÉ MUNICIPAL CODE Ch. 20 § 20.90

**Table 4-11: Previous Parking & Loading Regulations**

TYPE OF RESIDENTIAL LAND USE	PREVIOUS PARKING REQUIREMENTS				NEW PARKING REQUIREMENTS
One family dwelling	2 covered				No minimum
Two-family dwelling (duplex)	<b>NUMBER OF BEDROOMS</b>	<b>OPEN PARKING</b>	<b>ONE-CAR GARAGE</b>	<b>TWO-CAR GARAGE</b>	No minimum
	0 Bedroom (Studio)	1.5	1.5	2.0	
	1 Bedroom	1.5	2.0	2.0	
	2 Bedroom	2.0	2.0	2.0	
	3 Bedroom	2.0	2.0	2.0	
Each Additional Bedroom	0.25	0.25	0.25		
Multiple dwelling	<b>NUMBER OF BEDROOMS</b>	<b>OPEN PARKING</b>	<b>ONE-CAR GARAGE</b>	<b>TWO-CAR GARAGE</b>	No minimum
	0 Bedroom (Studio)	1.25	1.6	2.2	
	1 Bedroom	1.25	1.7	2.3	
	2 Bedroom	1.7	2.0	2.5	
	3 Bedroom	2.0	2.2	2.6	
Each Additional Bedroom	0.15	0.15	0.15		
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.				No minimum
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.				No minimum
SOURCE: City of San José Planning Division, 2022.					

In addition to revising existing parking standards the recent update also introduced Transportation Demand Management regulations (TDM). Removing parking minimums is a key component in achieving the City's climate goals but alone is not enough; helping people to use transit, walk, and bike more through TDM is an important complement to the removal of parking minimums. TDM can provide or incentivize convenient amenities and viable, affordable transportation options. Growing data shows how effective TDM is in reducing congestion and greenhouse gas emissions. This concept is gaining traction throughout the country, as other cities in the US have already adopted very similar TDM requirements, along with the removal of parking minimums. This includes cities such as San Francisco and Buffalo, New York. Regionally, Mountain View, Sunnyvale, Fremont and Pleasanton all have mandated TDM requirements.

Envision San José 2040 goal TR-11 calls for reducing vehicle miles traveled (VMT) by 45% by 2040 by improving transportation options beyond single-occupant vehicles. An effective TDM program will reduce VMT, and therefore carbon emissions, and parking demand, from every new development subject to the TDM ordinance. This update will no longer connect TDM requirements to the pursuit of parking reductions. Instead, it streamlines our process by creating one menu of TDM requirements for all projects. The measures contained in the menu would also qualify as CEQA mitigation measures if a project is required to reduce their VMT as part of that process. By unifying these two elements of the development process, this change will make the process more transparent for developers while helping the City achieve its transportation goals.

Since the introduction of TDM measures have yet to be tested or put into practice, it is not clear whether or not they may become a constraint to development.

## 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 [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 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 *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.

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*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.*

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Any projects in urban villages, or areas with Specific Plans, 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.

#### *Exception to Design Standards and Guidelines*

A project applicant may request an exception or exceptions to the design standards contained in the Design Standards and Guidelines. The exception process set forth in the Design Standards and Guidelines is in addition to concessions or waivers possible under State Density Bonus law. The request must be made in writing as part of the Planning permit application for the proposed project. The application for an exception must contain detailed information on the design standard that is requested to be waived; how the physical constraints and unique situations of the project site make it infeasible to comply with that design standard; and how the request meets each exception requirement. The decision-maker (Planning Director, Planning Commission, or City Council, as applicable) will consider the request and information provided and make findings to approve or deny the request. The decision-maker shall only grant an exception if all the following findings are made:

- There is a physical constraint or unique situation that: 1. Is not created by the project applicant or property owner; and 2. Is not caused by financial or economic considerations.
- Approving the exception will not create a safety hazard or impair the integrity and character of the neighborhood in which the subject property is located.
- The proposed project meets the intent of the design standard to the extent feasible. If any of above findings cannot be made, the decision-maker may still grant the exception if all the following findings are made:
  - The project advances the Major Strategies Chapter 1 of the General Plan;
  - The project is consistent with the Values and Guiding Principles of Section 1.2.1 of the Design Guidelines;
  - The project achieves the stated Rationale of the section of the Design Guidelines as set forth for each applicable Standard; and
  - There are counterbalancing considerations that justify the inconsistency.

#### **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: Site improvements may include those related to streets, sidewalks, water and sewage,



landscaping, recreation amenities, and any other public improvements found necessary to mitigate the impacts of new development, additional site improvements may be required in the City's Urban Village and Specific Plan areas. Off-site infrastructure improvements may be required to satisfy California Environmental Quality Act (CEQA) requirements, depending on the potential transportation impacts and the location of the site development.

- On-site improvements may include public roads, private driveways and walkways, fencing, landscaping, grading and drainage, stormwater treatment facilities, etc. These improvements are either required by State Law, 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).

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.

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.

#### Complete Street Design Standards and Guidelines

The [Complete Streets Design Standards & Guidelines](#) is a comprehensive set of street design standards and guidelines to guide how the City of San José builds and retrofits streets, intended to serve as a manual of design options to achieve the City's Envision 2040 General Plan vision of being a "walking and bicycling first" city. As such, it seeks to ensure that new and retrofitted streets are enhanced with "Complete Streets" design elements embracing all travel modes and activities appropriate for the facility. Complete Streets principles provide standards and guidelines for the design and implementation of streets that are comfortable and welcoming for all modes of travel. This includes design in accordance with "Vision Zero" principles that support the goal of eliminating traffic related deaths and severe injuries. These standards and guidelines represent the best practices that are currently being applied in California and nationwide to meet standards set by the California Complete Streets Act.

Overall, these standards and guidelines supports San José's public life, neighborhood livability, economic vitality, and environmental sustainability. In San José, street design is predominantly guided by street typologies established in the Envision San José 2040 General Plan and functional classifications. The Director of Transportation defines and maintains the City's Functional Classification Diagram of roadways (e.g., Local, Collector, or Arterial). Each street in San José has both a typology and a functional classification, described in *Table 4-12*, as referenced in the *Complete Streets Design Standards and*

*Guidelines.* These dimensions are intended to be used where space is limited due to previous development patterns or existing physical constraints, should be interpreted as minimum widths that are compatible with existing street configurations. These minimum dimensions allow for flexibility while at the same time providing the minimum space required for safety and comfort.

**Table 4-12: Standard Right-of-way (ROW) Widths**

Functional Classification	Street Designation	ROW Width (ft)	Minimum Centerline Radius (ft)
Local	Narrow Residential	40, 44, 46, or 48	150
	Minor Residential	50, 52, 54, 56, or 60	150
Collector	Neighborhood Collector	56, 60, or 64	300
	Neighborhood Collector	70	600
	Major Collector	80, 84, 86 or 90	600
Arterial	Minor Arterial	106	600
	Major Arterial	120 or 130	1000
Expressway		134 or 220	1000
SOURCE: City of San José Complete Streets Design Standards and Guidelines			

### Transportation Demand Management (TDM) Ordinance

The City's Transportation Demand Management (TDM) ordinance requires developers to incorporate programs and/or public improvements into their development projects that will reduce single occupancy vehicle trips, thereby reducing Vehicles Miles Traveled (VMT), while also making options for other modes of transportation more viable for tenants of the project. This includes things such as purchasing transit passes for tenants, installing bike share stations, and building enhanced pedestrian infrastructure off the project site. The City of San José has recently approved amendments to the existing parking and Transportation Demand Management regulations, taking effect on April 10th, 2023.

In the previous Zoning Ordinance, TDM was used as a method to allow developments to reduce their parking requirements below the existing minimums. The process often requires a lengthy negotiation, prolonging the development approval timeline. Developers faced uncertainty on how much TDM they will need to provide for their project to be approved with the amount of parking proposed, and the process of identifying and selecting TDM measures was not transparent to the public. The recent update streamlines the City process by creating one menu of TDM requirements for all projects, simplifying the program to create more predictable outcomes. Under San José's previous rules, developing TDM Plans was unclear, complicated, and expensive; the amendments to the TDM ordinance create a clear approach to standardizing TDM plans. In addition, the [San José Transportation Analysis Handbook](#) contains technical guidance so that the complete set of requirements for transportation analysis in San José is in one document.

The new regulations include categories which are based on the type of travel and/or parking demand each respective use generates, and the type(s) of TDM measures most effective in reducing vehicle trip demand.

- Home-End Uses are uses whose parking demand and VMT are largely determined by vehicle ownership rates and use frequency among the residents of these uses. TDM measures for these uses focus on reducing automobile ownership rates among Project's residents.
- Commute-End Uses are uses whose parking demand and VMT is largely determined by the volume of commuters driving to jobs generated by these uses. TDM measures for these uses

- focus on reducing drive-alone commuting to, and automobile parking demand at, a Project.
- Visit-End Uses are uses whose parking demand and VMT are largely determined by the volume of visitors driving to access goods, services, and social connection provided through these uses. TDM measures for these uses focus on increasing non-drive-alone visitor access to a Project.
- Other Uses are uses that typically generate moderate or minimal parking demand for personal vehicles and/or are typically minimally responsive to TDM measures.

There are two Project Levels as defined in *Table 4-13* (Table 20-250 of the zoning code). The Level applied to a Project consisting of an addition or change of use is based on the new floor area or the number of residential units contained in the newly constructed floor area or total floor area subjected to the change of use. Not all projects will be subject to the TDM requirements, projects that meet the TDM screening criteria will not require a TDM Plan, including: Single-family detached residential projects of 15 or fewer units, Single-family attached or multi-family residential projects of 25 or fewer units, or 100% deed restricted affordable units at a minimum density of 35 units per acre and located within ½ a mile of an existing major transit stop or along a high-quality transit corridor.

**Table 4-13: Project Level Thresholds, Muni Code Chapter 20.90, Table 20-250**

Use Category	Level 1 If a project meets ANY of the criteria below, it is classified in Level 1	Level 2 If a project meets ANY of the criteria below, it is classified in Level 2.
Home End Uses	16-299 dwelling units	300+ dwelling units
Commute End Uses	10,000-149,999 sf of gross floor area	150,000+ sf of gross floor area
Visit End Uses	100,000-249,999 sf of gross floor area	250,000+ sf of gross floor area
Other Uses	30,000 sf or more of gross floor area	300,000 + sf of gross floor area
Special Uses	hotel/motel with 150-249 guest rooms, or suites of rooms	hotel/motel with 250+ guest rooms, or suites of rooms
	school, college, or university (which requires building permits from City of San José) with 250 or more students	N/A

The TDM point requirement was identified based on how much VMT reduction is needed for a project to help the City advance its 2040 carbon reduction goals of 45% below the 2017 level. Under CEQA, projects are subject to the significance thresholds for VMT that are 15% below a citywide or regional average. In other words, in addition to transportation evaluation under CEQA, the City needs a TDM program that can

help projects achieve an additional 25 to 30% reduction in VMT. When developing a TDM Plan, projects would compile a list of TDM measures to meet the 25 TDM points. Each of the TDM measures has a corresponding point value based on its general effectiveness on reducing VMT per empirical research, with one TDM point being equivalent to approximately 1% reduction in VMT. *Table 4-14* includes the menu of TDM measures and *Table 4-15* describes the project levels and their corresponding requirements.

In December 2021, City staff collaborated with Latinos United for a New America to engage with three equity priority communities – the Bonita (District 3), Tropicana-Lanai (District 5), and Santee (District 7) neighborhoods. These equity priority communities helped City staff identify which TDM measures should be labeled equity-forward and prioritized by developers in their TDM Plan. After understanding the specific needs for the communities, City staff refined the TDM program to include a list of “equity measures”, such as infrastructure improvements on local streets beyond project frontages, that would benefit not only the future tenants of the new projects but also the low-income and historically underserved neighborhoods where the project would be located. Projects would receive twice as many TDM points by selecting the following equity measures in their TDM Plan.

- Provide bike and micromobility network improvements beyond project frontage
- Provide transit network improvements beyond project frontage
- Provide neighborhood street improvements beyond project frontage
- Provide pedestrian network improvements beyond project frontage
- Provide transit fare subsidies to low-income families in the local community
- Provide alternative transportation benefits to low-income families in the local community

**Table 4-14: Menu of TDM Measures and Applicability**

Category	Measure [ID]	TDM Point Values			
		Home-End Uses	Commute-End Uses	Visit-End Uses	Other Uses
<b>Project Characteristics</b>	Provide Affordable Housing	1 – 4	-	-	-
<b>Multimodal Network Improvements</b>	Provide Bike and Micromobility Network Improvements	1 – 4	1 – 4	1 – 4	1 – 4
	Provide Transit Network Improvements	1 – 4	1 – 4	1 – 4	1 – 4
	Provide Residential Street Improvements	1 – 4	1 – 4	1 – 4	1 – 4
	Provide Pedestrian Network Improvements	1 – 4	1 – 4	1 – 4	1 – 4
<b>Parking</b>	Right-size Parking Supply	1 – 20	1 – 20	1 – 20	-
	Provide Bike Parking Facilities	1 – 2	1 – 2	1 – 2	-
	Provide Shared Parking	1 – 2	1 – 2	1 – 2	-
<b>Programmatic TDM</b>	Provide School Pool Programs	1	-	-	-
	Provide Bike Share Stations	1 – 2	1 – 2	1 – 2	-
	Provide Car Share Station	1 – 4	1 – 4	1 – 4	-
	Provide Education, Marketing, and Outreach	1 – 2	1 – 2	-	-

Category	Measure [ID]	TDM Point Values			
		Home-End Uses	Commute-End Uses	Visit-End Uses	Other Uses
	Join a Transportation Management Association (TMA)	See note <sup>(1)</sup>	See note <sup>(1)</sup>	See note <sup>(1)</sup>	-
	Provide Parking Cash-out	-	2	-	-
	Provide Transit Subsidies	1 – 8	1 – 8	1 – 8	-
	Provide Flexible Work Schedules	-	1 – 4	-	-
	Provide Private Shuttle/ Transit Service	4 – 8	4 – 8	4 – 8	-
	Price Workplace Parking	-	2	1	-
	Provide Alternative Transportation Benefits	1 – 8	1 – 8	1 – 8	-
	Provide a Neighborhood School	2	-	-	-
	Provide Ride-Share Programs	1	1	-	-
	Subsidize Public Transit Service Upgrade or Expansion	1 – 4	1 – 4	1 – 4	-
	Provide Targeted Behavioral Interventions	1 – 2	1 – 2	1 – 2	-
	Unbundle Parking Costs from Property Cost	1 – 2	-	-	-
	Provide Vanpool Incentives	1 – 4	1 – 4	1 – 4	-
	Provide Voluntary Travel Behavior Change Program	1 – 2	1 – 2	1 – 2	-

**Table 4-15: Project Requirements, Chapter 20.90, Table 20-255**

Project Level	Point Target for HEU/VEU/CEU Uses	Point Target for Other Uses	TDM Plan and Annual TDM Plan Compliance Documentation	TDM Monitoring Report
Level 1 Projects	25 Points	5 Points	Required	Not Required
Level 2 Projects	25 Points	5 Points	Required	Required

Since the TDM program has yet to go into effect, there is no current data indicating it is a constraint to housing development. As changes occur within the evolving field of TDM, potential updates to the TDM menu may become necessary. Allowing for adjustments ensures that TDM measures listed in the menu reflect the most up-to-date research on the effectiveness of a TDM measure. Over time, City staff will continue to analyze data and collect research to maximize the effectiveness of the measures in reducing VMT.

The TDM program was developed to give project applicants greater certainty about transportation improvement needs during the development review process and reduce unnecessary delays. The updated TDM program aims to streamline the development review process by (1) making sure that the TDM menu is the same as the menu being used for transportation review under CEQA, and (2) establishing a points

system that is based on objective criteria with greater certainty about the cost of TDM measures. 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. While on- and off-site improvements increase the costs of development, they are required to mitigate the impact of new development on the City's infrastructure and are largely unavoidable.

### 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 4-16*.

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 4-16: 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 <sup>2</sup> <i>Moderate Market:</i> \$19.68/ft <sup>2</sup>
Mixed Compliance Option	20%	Not applicable	<i>Strong Market:</i> Pay 5% at 100% AMI plus pay in-lieu fee of \$19.68/ft <sup>2</sup> in-lieu for all rentable areas <i>Moderate Market:</i> Pay 5% at 100% AMI plus pay in-lieu fee of \$12.49/ft <sup>2</sup> 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 4-17*.

**Table 4-17: 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<sup>12</sup>. 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

<sup>12</sup> CA CODE § 65915



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 City of San José adopted its own Density Bonus ordinance in 2018. The Zoning Code defines affordable rental or ownership of housing units as restricted affordable units and anything not within this category as non-restricted units<sup>13</sup>. 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 (20.190), 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. 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. Given the many changes in State Density Bonus Law since 2019, staff will implement a program to update the City's existing density bonus ordinance to ensure compliance with State Law (See Ch. 3, P-43).

## ~~INCENTIVES & CONCESSIONS TO PROMOTE USE OF DENSITY BONUS~~

~~As outlined in the San Jose Municipal Code~~

~~[www.sanjoseca.gov/MunicipalCode](http://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~~

<sup>13</sup> San José Municipal Code Ch. 20 §20.190.020

### Senate Bill 35 Streamlined Projects

Senate Bill 35 (2017) requires local governments 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 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 May 2023, San José has approved more than 2,500 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

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*As of May 2023, San José has approved more than 2,500 units under the SB 35 process.*

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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<sup>14,12</sup> 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<sup>15</sup>. 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<sup>16</sup>.

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.

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<sup>14</sup> 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](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB330)

<sup>15</sup> CA CODE § 65860(a)

<sup>16</sup> CA CODE § 66300. Accessed March 2022. [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200SB940](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB940)

### 4.3.6 Planning Process and Application Fees

The City of San José maintains an internet website with all pertinent development information including links to information about zoning, development standards, and fees on the City's website. Zoning regulations, including descriptions of zoning districts and their development standards can be found in Title 20 of our municipal code; our Zoning Code webpage (<https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/ordinances-proposed-updates/zoning-code-title-20>) includes an interactive map highlighting the zoning for all the properties within the City of San José and the site also includes a link to Title 20 and the full municipal code which is hosted through the "Municode" website, ([https://library.municode.com/ca/san\\_jose/codes/code\\_of\\_ordinances?nodeId=SAN\\_JOSEMUCO](https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=SAN_JOSEMUCO)). In addition, our website includes links to the current fee schedule, which breaks down all the fees associated with various types of development.

The housing development process can face challenges which in turn constrain development; long permit processing times can result in uncertainty or unexpected expenses which ultimately diminish the feasibility of housing development projects. The necessary approval process depends on several factors, including the applicable zoning district, the project type, size, and complexity, and the degree to which the project requires variances, conditional use permits, rezoning, or general plan amendments. Housing development applications can generally be grouped into two categories, ministerial and discretionary.

#### *Ministerial Review*

A ministerial action is when a decision maker, such as a City staff member or a public official, applies the law to the facts as presented, but uses little or no personal judgment in the decision process. Projects subject to ministerial review are permitted by right and are granted through reference to objective standards. Ministerial planning permits are not subject to CEQA and do not require a community meeting or a public hearing for approval/denial. Projects that are currently subject to by-right review and not subject to CEQA are limited to ADUs, affordable housing and supportive housing streamlining projects (SB 35 and AB 2162), and SB 9 lot splits. In 2020, the City adopted Chapter 20.195, Ministerial Approvals, which specifies how the City will implement the review and approval requirements of California Government Code Sections 65650 et seq., 65660 et seq., and 65913.4.

Affordable housing developments under Government Code Section 65913.4, commonly referred to as an SB 35 project, are subject to streamlined, ministerial approval. The City maintains and regularly updates information regarding SB 35 streamlining process on its website. Prior to submitting an application for streamlined ministerial approval under SB 35, an applicant must first submit a notice of intent pre-application to the City, which commences the tribal scoping consultation process in accordance with AB 168. Only when the tribal scoping consultation is completed may an applicant submit an application for streamlined ministerial approval. Approvals must be completed within 90 days of submittal (for eligible projects involving 150 or fewer units) or 180 days of submittal (for eligible projects containing more than 150 housing units). As ministerial approvals, these projects are not subject to CEQA under CEQA Guidelines Section 15268.

### *Discretionary Review*

A discretionary action is when a decision maker, such as a City staff member or a public official, can use their judgment in deciding whether and how to carry out or approve a project. Only discretionary actions (decisions) can be appealed. Discretionary review projects are subject to all city regulations, typically requiring outreach, noticing, environmental analysis, and opportunities for public comment. The City works with developers and project applicants to expedite approval procedures and eliminate unnecessary time constraints on development. A [Preliminary Review Request](#) is available to applicants through which City staff can offer early guidance on zoning conformity and necessary permitting processes.

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, as shown in *Table 4-18*. Project review, as well as any required public hearing or community meetings, may pose a constraint to the development of multifamily projects. Properties designated as historic or located in a historic conservation area may require additional review.

This section explores the typical process for a development application in the City of San José.

- **Preliminary Review (Optional).** Complex proposals that involve multiple permit approvals may elect to go through a voluntary preliminary review process. Through this process, staff will evaluate the proposal, review compliance with the General Plan and Zoning Code, determine appropriate applications and fees, offer comments on the proposal to meet the General Plan objectives and Zoning Code development standards, identify related non-planning issues, and describe the permit process and timeline. This step can help provide some certainty in the early stages of a potential project.
- **Application for Development Review.** 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 enough to support the proposed development and are compatible with City standards. Residential Development may require one of two application pathways.
  - *Single Family House Permit* – depending on the project’s zoning, proposed FAR, and building height a Single Family House Permit may be required,
  - *Development/Use Permit* – which covers a range of permits including, Site development permit, Conditional use permit, Special use permit, and Planned development permit.

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.

- **Environmental Review.** Pursuant to the California Environmental Quality Act, projects are required to undergo environmental review to identify significant environmental impacts. Infill development consistent with the General Plan and zoning requirements may be exempt from such review when it complies with specific criteria such as: meeting minimum densities, providing affordable units, or locating in close proximity to high quality transit stations.
- **Public Hearing.** There are three different types of public hearings, all of which are open to the public, and available in a hybrid format (virtual and in-person): Director’s Hearing, Planning Commission, and City Council. Agendas, including links to all pertinent details for development projects are available at least seven days prior to the meeting; 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.
  - **Director’s Hearing,** 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. Director’s Hearing are held weekly, offering the most regular opportunity for projects to be approved. Director’s Hearing is also where most residential projects are heard/approved, including Single Family House Permit, Special Use Permit, or a Site Development Permit.
  - **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 to the City Council; however, it is also charged with the authority to approve Conditional Use Permits and Tentative Maps.
  - **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 City Council is the final decision-maker on appeals of Planning Commission decisions.

The time required to process an application depends primarily on the permit type, size, and complexity of the project and the number of approvals required. Typical timelines for common applications, as well as the relevant approval body, are provided below in *Table 4-18*. 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

Through the funding of the Destination: Home planner position, the City prioritizes affordable housing development during the entitlement process, and actively works with affordable housing developments to ensure that projects can smoothly go through the entire approval process. This is a grant-funded position that reviews one-hundred percent affordable projects with a minimum percentage of units dedicated to permanent supportive housing or extremely-low income units. The planner helps facilitate the process and supports affordable housing developers during the pre-application phase with questions around zoning, and entitlement processes.

**Table 4-18: Permit Process**

TYPE OF PERMIT OR APPROVAL	INITIAL SUBMITTAL FEES	TYPICAL APPLICATION TIMELINE	PUBLIC HEARING	
			INITIAL DECISION MAKING BODY	APPEAL DECISION MAKING BODY
SB 35/AB 216 Streamlined Ministerial Permit	\$ 9,304	3 months	N/A (Ministerial)	
Single Family House Permit (administrative)	\$718 - \$2,727	2 months	N/A	N/A
Single Family House Permit (with public hearing)	\$9,318	6 months	Director's Hearing	N/A
Site Development Permit	\$12,952	7 months	Director's Hearing	Planning Commission
Special Use Permit	\$ 8,593	4-7 months	Director's Hearing	Planning Commission
Conditional Use Permit	\$22,950	7 months	Planning Commission	City Council
Planned Development Permit	\$13,023	7 months	Director's Hearing	Planning Commission
Rezoning (conventional)	\$13,212	5 months	City Council	N/A
Rezoning (conforming)	\$12,429	5 months	City Council	N/A
Tentative Map	\$12,882	6 months	Planning Commission	City Council
General Plan Amendments	\$34,235	9-12 months	City Council	N/A

### Historic Landmarks Commission

The Historic Landmarks Commission (HLC) is established in accordance with the San José Municipal Code, Chapter 13.48 and Part 26. Seven members are appointed by the City Council and are residents of San José, unless specifically authorized otherwise. They bring a range of expertise related to historic preservation. The HLC meets once a month and serves as a public hearing body and is responsible for forwarding comments and recommendations to the Director of Planning and City Council on:

- Historic Preservation permits for alterations to a City Landmark or within a City Landmark Historic District;
- Nominations for City Landmark, City Landmark Historic District, and Conservation Areas;
- Mills Act Historic Property Contracts; and
- Preservation, exhibition, and protection of the History San José Museum.

HLC also maintains the City's Historic Resources Inventory, using this to provide comments and recommendations on development proposals that may impact cultural resources. As appropriate, HLC may recommend adding properties identified through development proposals to the Historic Resources Inventory.

### Major Permits

The following is a summary of the typical major permit application process. Most of the steps are applicable to each type of major application; however, both the CEQA process and the public hearing process may vary a little, depending upon project type.

1. Preliminary Review Request (Optional). Before the applicant files the application, a preliminary review is recommended for most projects. A project manager will review the proposal and can point out many of the potential problems that may affect or delay the application, as well as provide other useful information to the applicant. Preliminary review is a voluntary step that allows a proposed project to be reviewed prior to going through the formal application process. A preliminary review allows the applicant to become familiar with the City's codes, policies and development review processes and how they will affect the project. Preliminary review also can help reduce the time and money spent on revising plans to meet City standards before going to a public hearing.
2. Application Filed by Applicant. The applicant files a formal application and pays the necessary fees. For most applications, a well-drawn set of plans is necessary as part of the application submittal in order for the formal review process to begin. All newly-filed applications are posted on the Department's website and are available for public review.
3. City Staff Review. The application is reviewed by the Department of Planning, Building, and Code Enforcement. Other City departments (which may include Police, Fire, Public Works, and Transportation) and outside agencies (e.g. Caltrans, the Valley Transportation Authority, and the Santa Clara Valley Water District) also review the project application for compliance with health and safety standards.
4. Environmental Review (CEQA). Besides meeting General Plan policies and development standards, most projects must receive an environmental clearance. State law requires a separate assessment of every project's environmental impacts through the environmental review process. Applications for environmental review must therefore accompany each major application request.
5. Community Meeting. The purpose of community meetings is to inform property owners, residents and other interested parties about the proposed development, answer questions, receive public comment, and address project issues before the Public Hearing. All development permits which require community meetings follow the requirements set forth in Council Policy 6-30 Public Outreach Policy for Pending Land Use and Development Proposals. For Large and/or Significant Community Interest Proposals, there should be at least one community meeting no less than 45 days following the filing of the application nor less than 30 days prior to the Public Hearing. The meeting is typically held as early as possible in the process, to allow applicants and interested parties to share their goals and concerns before proposal details are finalized.
6. Notice of Public Hearing/Public Input. Once the review process is completed, the applications are set for hearing. All major permits require an open hearing that allows the public to provide input. Generally, a notice of the public hearing is sent to all property owners and residents within 500 feet of the project site. (A smaller or larger radius may be used, depending upon the project type and/or scale.) The public notice will provide a brief description of the project, the project address, the project contact, and the date of the public hearing. This provides the public an opportunity to learn about the project, to provide input, and to participate in the public hearing process.
7. Public Hearing. Discretionary projects will seek approval through one of three public hearing options:  
*Director's Hearing.* Some major permit applications are forwarded with recommendations from City staff to the Director of Planning, Building, and Code Enforcement for a decision. The Director conducts a public hearing to receive input from members of the community



prior to issuing a decision. The Director's decision is subject to appeal to the Planning Commission.

*Planning Commission.* For some major permits, the Department of Planning, Building, and Code Enforcement forwards a recommendation to the Planning Commission that is based upon a review of the project for conformance to the General Plan and other related laws and regulations. The Planning Commission's public hearing provides the applicant and neighboring residents an additional opportunity to voice their opinions. The Commission acts upon conditional use permits, environmental impact reports, and appeals of Planning Director decisions. The Commission also provides a recommendation on rezoning and General Plan amendment applications to the City Council, as well as on proposed Zoning Ordinance changes.

*City Council.* The City Council makes the final decision on legislative acts such as rezoning or General Plan amendments. The City Council's public hearing provides the applicant and neighboring residents an opportunity to voice further opinions. The City Council approves the project with conditions of approval or denies the project.

### **Single Family House Permit**

A single-family new construction project may be approved in about 12 weeks from date of plan submission, with the issuance of a Building Permit, 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 do not result in substantial constraints to housing developers.

A Single-Family House Permit is required if the house (new construction, remodeling, or new addition) meets any of the following criteria:

- If it exceeds 30 feet or two stories in height; or
- If the floor area ratio (FAR) of the house exceeds .45; or
- If the house or site is a designated City Landmark; or
- If it is listed on the City's Historic Resources Inventory; or
- If it is in a Historic District; or
- If it is in a Historic Conservation Area.

### **Site Development Permit**

Site Development Permits are land development permits issued for all zoning districts other than a Planned Development (PD). Their purpose is to make sure that each project conforms to the Zoning Ordinance and City policy. There are separate design guidelines for industrial, commercial and residential developments. A Site Development Permit is required to construct, enlarge, or install a building or a structure. Any exterior alteration, pavement of a lot, or underground installation requires a permit. A Site Development Permit Amendment allows for the amendment of an existing Site Development Permit.

The development of new multifamily housing requires a Site Development Permit, which is processed through the Director's Hearing. The public hearing allows the City to review the proposed project and ensure that the proposed project is functionally and architecturally compatible with adjacent structures, as well as to place conditions on the permit that would enhance the project and reduce any effects on surrounding properties. The permit process also allows the public an opportunity to voice their opinions

about the proposed project.

SITE DEVELOPMENT PERMIT FINDINGS
<p>The proposed project must be:</p> <ol style="list-style-type: none"> <li>1. Consistent with and will further the policies of the general plan and applicable specific plans and area development policies.</li> <li>2. Conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project.</li> <li>3. Consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency.</li> <li>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.</li> <li>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.</li> <li>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.</li> <li>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.</li> <li>8. Traffic access, pedestrian access and parking are adequate.</li> </ol>

### Planned Development Permit

For development within a Planned Development zoning district, a Planned Development Permit is necessary to implement the zoning and to allow the issuance of Public Works clearance and Building Permits. The Planned Development Permit application process, similar to the Site Development Permit process, reviews the proposed project’s site planning, building design, landscaping, circulation, signage, and other development requirements. Planned Development Permit applications are approved through the Director’s Hearing

PLANNED DEVELOPMENT PERMIT FINDINGS
<p>The proposed project must be:</p> <ol style="list-style-type: none"> <li>1. Consistent with and furthers the policies of the general plan</li> <li>2. Conforms in all respects to the planned development zoning of the property</li> <li>3. Consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency</li> <li>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</li> <li>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.</li> </ol>

## Conditional Use or Special Use Permit

The Municipal Code specifies uses which are allowed in each zoning district, additionally uses can be approved through the Conditional Use Permit or Special Use Permit. The Conditional use permits (CUPs) and Special use permits (SUPs) processes allows the City to review the proposed use and determine whether the site is appropriate for that type of activity and place conditions on the use that would enhance the project and reduce any possible negative effects on surrounding properties. It also allows members of the public an opportunity to voice their opinions about the proposed use.

Conditional use permits are approved by the Planning Commission and appealable to the City Council. Conditional Use permits (CUP) are required in specific zones for fraternity uses, residential care facilities, temporary residential shelters, and residential hotels or Single Room Occupancy (SROs). SUPs are approved through the Director's Hearing and appealable to the Planning Commission. An SUP may be required for live/work uses, co-living communities, guesthouses, and emergency residential shelters.

CONDITIONAL USE PERMIT OR SPECIAL USE PERMIT FINDINGS
<p>The proposed project must be:</p> <ol style="list-style-type: none"> <li>1. Consistent with and will further the policies of the general plan and applicable specific plans and area development policies.</li> <li>2. Conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project.</li> <li>3. Consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency.</li> <li>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.</li> <li>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.</li> <li>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.</li> <li>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.</li> </ol>

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. However, to ensure that findings for all permits are interpreted in an objective manner, the City is proposing to review and modify findings language as necessary to ensure consistency with State Housing laws (See Ch. 3, P-41).

### 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's 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 4-19*. Overall based on the analysis from the City's Cost of Residential Development Study, the City's fees and exactions for multifamily, including entitlement fees, represent from 3.4% to 4.5% of the total costs per unit depending on the location and construction type of the unit. For single family development, city fees and taxes represent approximately 2.9% of the total costs to construct a unit. Given that all fees represent less than 5% of total unit's costs, the City does not believe its fees and exactions represent an undue burden on development.

**Table 4-19: 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 Per Unit	\$28,653	\$27,157	\$23,517	\$36,655
City Fees as % of Total Cost per Unit****	3.7%	3.9%	4.5%	3.4%
* Location Map: <a href="https://csj.maps.arcgis.com/apps/webappviewer/index.html?id=8518bc095ae54f4ea025d7743c650881">https://csj.maps.arcgis.com/apps/webappviewer/index.html?id=8518bc095ae54f4ea025d7743c650881</a> ** 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. ****Excludes School Fees Per Unit which are set by school district.				

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 4-20* 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 2023.

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 represent less than 5% of the total costs of multifamily housing thus are not an undue constraint; see *Table 4-20*. For affordable housing, the City intends to further lower fees and exactions by implementing a suspension of construction taxes in addition to the 50% reduction provided for park impact fees.

**Table 4-20: 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	\$43,005*	\$36,655**	\$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: Provided by Santa Clara County Regional Planning Collaborative

\* Updated calculations by City of San José. The previous fee calculation for single-family included in the first draft of the Housing Element did not include park impact fees and incorrectly calculated the City's construction taxes.

\*\* City of San José and Century Urban estimate for Cost of Development report in 2022 for Type V multifamily construction which

represents small multi-family in the south and east regions of the City.

\*\*\* City of San José and Century Urban estimate for Cost of Development report in 2022 for Type III multifamily construction which presents large multifamily in the west area of the City.

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*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.*

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### 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, Requests for Reasonable Accommodation (RRA), 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 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.

A review of RRA applications determined that more applications are approved than disapproved; however, it also revealed that many applications are withdrawn. It is not always clear why applications are withdrawn. In some instances, it can be due to the cost of the application, lack of support for an approval, or that the application was not necessary in the first place. Since the current zoning ordinance has not



been updated since its adoption in 2001, staff is including a program to update Chapter 20.160 to ensure the process and findings do not pose a constraints on persons with disabilities (See Ch.3, I-19).

### **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. Staff is proposing a program (Ch. 3, P-42) to update the zoning code as it relates to group homes, to ensure consistency with State and Federal laws.

### **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<sup>17</sup>. 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<sup>18</sup>.

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*"<sup>19</sup>." 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<sup>20</sup>. 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<sup>21</sup>.

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 4-6*<sup>22</sup>. 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 4-6*.

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<sup>17</sup> CA CODE § 65583

<sup>18</sup> CA CODE § 65582(a)(4)

<sup>19</sup> San José Municipal Code, Ch. 20 § 20.200.360

<sup>20</sup> San José Municipal Code Ch. 20 § 20.80

<sup>21</sup> CA CODE § 65582(a)(4)

<sup>22</sup> City of San José Ordinance 29218. Accessed March 2022. <https://records.sanjoseca.gov/Ordinances/ORD29218.PDF>

Additionally, the Housing Element includes a program to update the Zoning Code pursuant to AB 2339 (2022). Staff will also work to amend the Specific Use Regulations for Emergency Shelters in Chapter 20.80, (Part 6, Section 20.80.500) to further facilitate the development of emergency shelters (See Ch. 3, H-14).

**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.<sup>23</sup>

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 4-21*.

**Table 4-21: 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.

<sup>23</sup> "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.

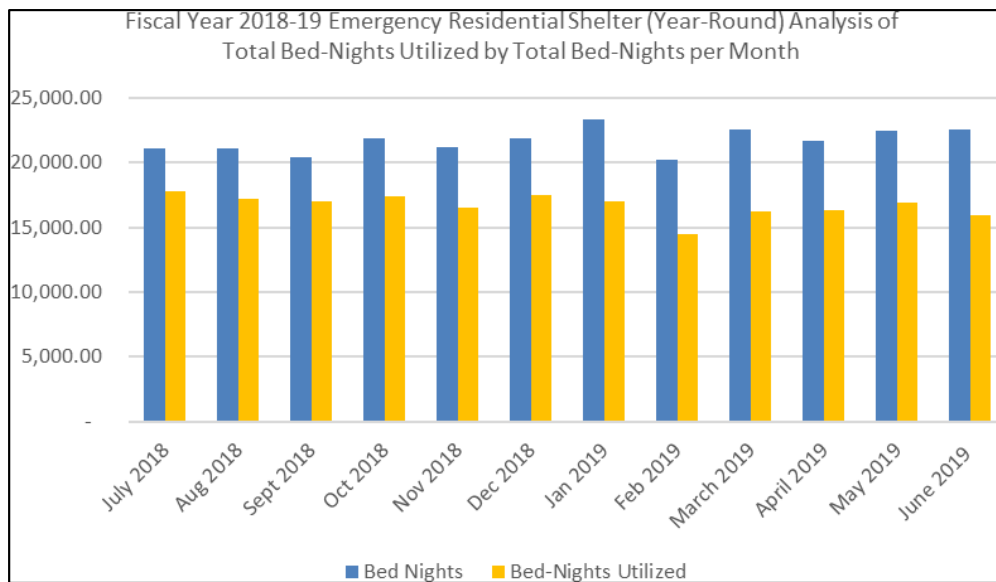
The shelters that exist today are conditionally permitted and none of these exist in the CIC district. The inventory of beds these shelters provide fluctuates by month in the following categories: year-round, seasonal, and overflow. The total number of beds in each category are as follows:

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

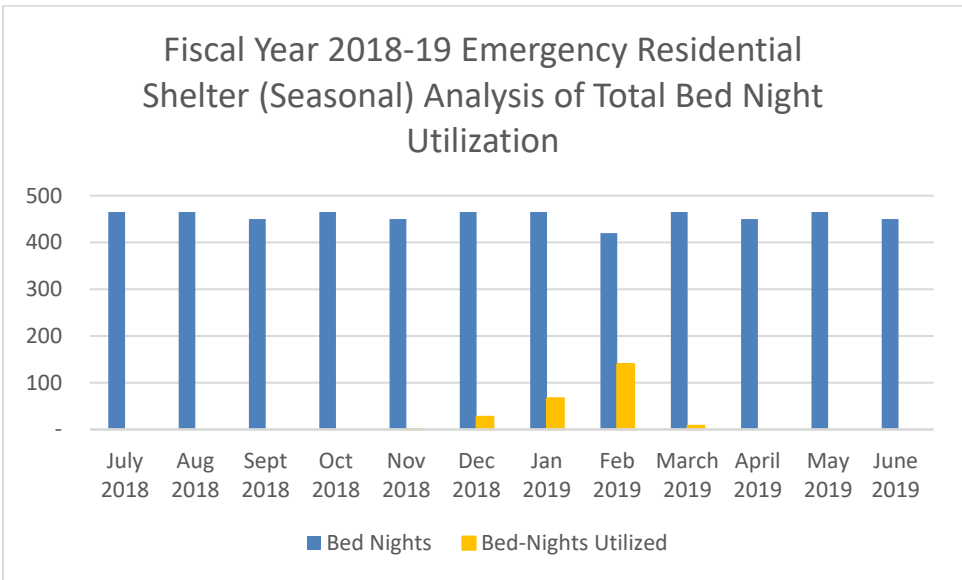
The total number of beds by month are further broken down into total number of beds available each night for the month. This total is compared to the number of beds used each month, by the three categories described previously, see *Figure 4-1, 4-2 and 4-3*.

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 utilizations 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).

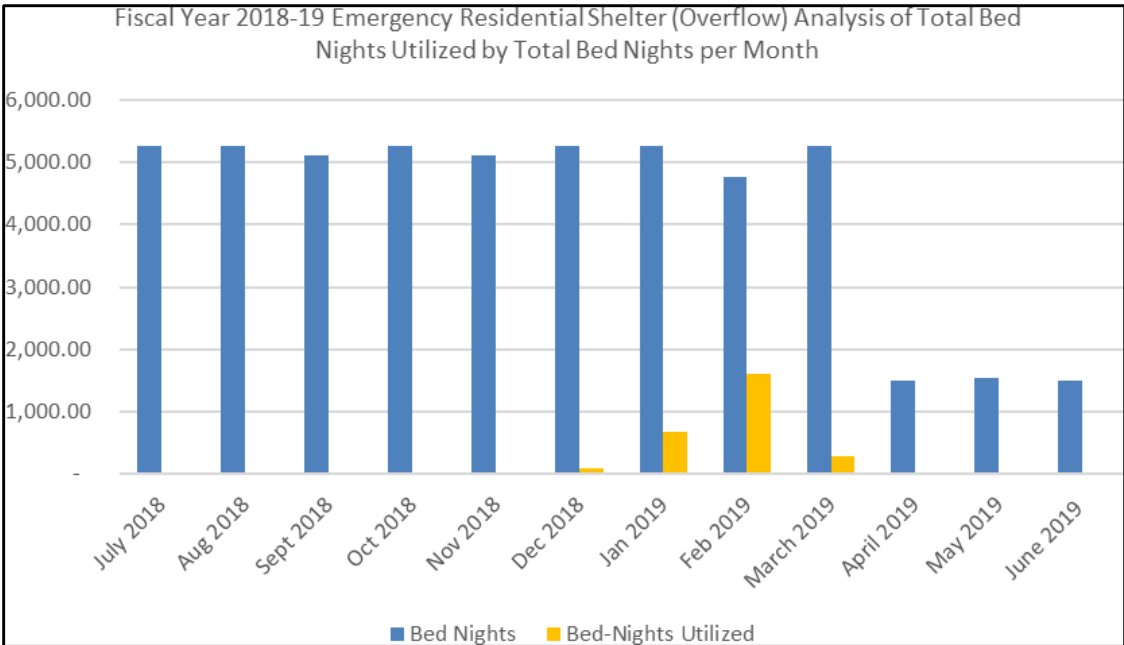
**Figure 4-1: Emergency Residential Shelters - Year-Round Analysis of Bed Usage**



**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,<sup>24</sup> in December of 2015.<sup>25</sup> 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.<sup>26</sup> 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 4-22*. The shelter crisis has not been lifted to date.

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<sup>24</sup> CA CODE § 8698

<sup>25</sup> City of San José Resolution 77606. Accessed March 2022: <https://records.sanjoseca.gov/Resolutions/RES77606.PDF>

<sup>26</sup> City of San José 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 4-22: 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 José 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.<sup>27</sup>

<sup>27</sup> San José 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) districts and deemed low barrier navigation centers as a by right use in those districts.<sup>28</sup> 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.<sup>29</sup>

## 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.<sup>30</sup>

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.<sup>31</sup> 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:

<sup>28</sup> SAN JOSE ORDINANCE 30603. Accessed March 2022: <https://records.sanjoseca.gov/Ordinances/ORD30603.pdf>

<sup>29</sup> SAN JOSE MUNICIPAL CODE Ch. 20.

<sup>30</sup> SAN JOSE MUNICIPAL CODE Ch. 20 § 20.200.1265 & 20.200.1283.

<sup>31</sup> CA CODE § 65583. Accessed March 2022: [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB2162](https://leginfo.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.<sup>32</sup> 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.<sup>33</sup> Seasonal farm workers on the other hand have decreased from 3,760 to 1,757.<sup>34</sup> 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.<sup>35</sup> 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~~.<sup>36</sup>

<sup>32</sup> 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/>

<sup>33</sup> "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)

<sup>34</sup> U.S. Department of Agriculture, Census of Farmworkers (2002, 2007, 2012, 2017), Table 7: Hired Farm Labor

<sup>35</sup> 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/>

<sup>36</sup> CA CODE § 17021.6



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

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.<sup>37</sup>

Since the zoning code does not explicitly state that employee housing for six or fewer employees shall be treated as a single-family residential use, a program has been added to clarify that intent and to be consistent with Health & Safety Code sections 17021.5, 17021.6 and 17021.8 (See Ch. 3.1-3).

### **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.<sup>38</sup> 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.<sup>39</sup> 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.

### **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.<sup>40</sup> Other consideration for manufactured homes include the State Accessory Dwelling Unit definition which indicates manufactured homes are a permissible accessory housing type.<sup>41</sup>

The state requires that mobilehome parks be similarly permitted on all land planned and zoned for

<sup>37</sup> CA CODE § 17021.5. Accessed March 2022. [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=HSC&sectionNum=17021.5](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=HSC&sectionNum=17021.5).

<sup>38</sup> "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](https://www.researchgate.net/publication/350975155_An_Overview_of_Emerging_Construction_Technologies)

<sup>39</sup> CA CODE § 19971. Accessed March 2022. [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=HSC&sectionNum=19971#:~:text=%E2%80%9CFactory%2Dbuilt%20housing%E2%80%9D%20means,installation%20at%20the%20building%20site](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=HSC&sectionNum=19971#:~:text=%E2%80%9CFactory%2Dbuilt%20housing%E2%80%9D%20means,installation%20at%20the%20building%20site)

<sup>40</sup> CA CODE § 65852.3—65852.5

<sup>41</sup> CA CODE § 65852.2.

residential use but specifically constrains such a use where residential is allowed under the General Plan designation.<sup>42</sup> 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 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.<sup>43</sup>

## 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 5<sup>th</sup> 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

<sup>42</sup> CA CODE § 65852.7

<sup>43</sup> "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>

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:

- **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. 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 4-23* shows the number of affordable units lost from the City’s housing inventory from 2012 to 2022 due to expiring affordability restrictions.

**Table 4-23: 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
<b>TOTAL EXPIRED UNITS:</b>				<b>291</b>	<b>28</b>	<b>263</b>

\*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 4-24 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](https://chpc.net/?sfid=181&_sft_resources_type=preservation).<sup>44</sup>
- National Housing Preservation Database, <https://preservationdatabase.org/>
- San José Housing staff assessment.

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<sup>44</sup> Please note, staff identified several discrepancies between the City’s records and the California Housing Partnership Corporation’s 2022 report. For a more detailed analysis of these differences, please see Appendix B, Section III.B.4.b.

**Table 4-24: 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 José 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			
<b>TOTAL AFFORDABLE UNITS AT RISK OF EXPIRING:</b>				<b>1,826</b>	<b>108</b>	<b>1,718</b>	

\*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 4-25* contains more information.



**Table 4-25: 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.

Chapter 3 contains policies and programs to help address the City's need to preserve the affordability and condition of existing restricted affordable housing in San José. These include:

- P-16 Groundleases for affordable housing
- R-1 Monitor at-risk affordable units
- R-7 Extend affordability restrictions.