

## Opportunity Housing Frequently Asked Questions (FAQ) Updated 8/14/2020

### 1. What is “opportunity housing”?

Opportunity housing is a term that the City will use to refer to multi-unit housing on properties with a Residential Neighborhood General Plan land use designation. Properties with the Residential Neighborhood land use designation are typically in single-family neighborhoods and this designation generally supports single family homes at 8 dwelling units to the acre. Opportunity housing would allow up to four units per parcel which include duplexes, triplexes, fourplexes, and bungalow courts. This type of development was allowed in San José prior to World War II and still exists in many of San José’s older neighborhoods.

Staff is proposing to establish a policy framework to provide more opportunities to build housing and provide more housing options. Opportunity housing is affordable by design since the units would presumably be smaller compared to a single-family residence on a property. With the current housing affordability crisis, opportunity housing is intended to allow more housing options for residents that find single family neighborhoods desirable, but single-family homes unattainable.

### 2. What is the staff recommendation for opportunity housing?

Staff recommended a preliminary policy framework and action plan to allow opportunity housing during the February 27<sup>th</sup> Task Force meeting, a refined recommendation at the July 30<sup>th</sup> Task Force meeting, and a further refined recommendation at the August 20<sup>th</sup> Task Force meeting. It is important to emphasize that this is a preliminary recommendation that will change with the input of the public, Task Force, Planning Commission, and City Council. Staff will proceed with more focused and targeted community engagement after a recommendation on the Opportunity Housing conceptual policy framework is considered by City Council in the Spring of 2021. With additional analyses, community engagement, and changes to various City documents to allow opportunity housing, it would likely take up to two years to fully implement Opportunity Housing.

At the August 20 Task Force meeting, staff recommend will recommend the following:

*“Staff recommends continuing to explore allowing up to four units on parcels with a Residential Neighborhood land use designation in areas generally a half-mile walking distance around Transit Urban Villages, taking into consideration natural, human-made, and neighborhood boundaries, and on properties adjacent to existing multifamily housing types or properties designated for multifamily housing. Should City Council direct staff to further explore Opportunity Housing, the following actions will need to be initiated.*

1. *Conduct a citywide community engagement effort: a. Work with community organizations and leaders to encourage participation and diverse representation reflective of San José in the outreach process.*
2. *Explore creating an affordable housing incentive to encourage inclusion of units at affordable or moderately-priced levels in Opportunity Housing.*
3. *Find an approach that would allow Opportunity Housing while also minimizing displacement risk:*

- a. *Conduct a Displacement Risk Analysis where Opportunity Housing would be implemented.*
  - b. *Determine if existing City protections for renters (i.e., just causes for evictions under the Tenant Protection Ordinance, Ellis Act Ordinance relocation requirements) would be sufficient or are additional protections needed to minimize and discourage displacement. Consider additional protections for renters such as not allowing Opportunity Housing on properties that have withdrawn from the market through the Ellis Act Ordinance, are qualifying properties under the Apartment Rent Ordinance, and have been occupied by renters in recent years.*
  - c. *Consider additional restrictions for use of Opportunity Housing units as short term rentals, beyond the City's existing ordinance.*
4. *Explore strategies to preserve historic areas and properties while also allowing Opportunity Housing:*
    - a. *Consider allowing the adaptive reuse of structures that are on or are eligible for inclusion on the City of San José's Historic Resources Inventory.*
    - b. *Consider an age-based rule for older homes applying for Opportunity Housing if updates to the Historic Resources Inventory are not completed by the time of implementation.*
  5. *Update City policies and ordinances to allow Opportunity Housing:*
    - a. *Update the Citywide Design Guidelines and Standards to include Opportunity Housing design standards that ensure that Opportunity Housing projects are designed to be compatible with existing neighborhoods.*
    - b. *Revise the General Plan and Zoning Code to allow and facilitate Opportunity Housing while maintaining the intent for Opportunity Housing to blend in with the existing neighborhood.*

*As a reminder, the Task Force recommendation on Opportunity Housing will be packaged with all other recommendations on the General Plan 4-Year Review Scope of Work and presented to Council in spring 2021. Should the Task Force take action to recommend that City Council move forward with Opportunity Housing conceptual policy framework, staff will also conduct a Cost Effectiveness Analysis to determine the feasibility and cost of Opportunity Housing types and present the results to the City Council in spring 2021. Should the City Council approve the recommendation on Opportunity Housing, then staff would initiate the actions listed in items 1 through 5 above. Upon completion, these items will be presented to City Council for their approval.*

*Environmental analysis of the Opportunity Housing conceptual policy framework will be conducted programmatically as part of the General Plan 4-Year Review process. However, an in-depth environmental analysis would be completed as part of the General Plan Housing Element update which will be initiated in 2021. The Opportunity Housing action item work plan and the General Plan Housing Element update will run concurrently. Staff anticipates the Opportunity Housing work plan to be aligned with the mandated General Plan Housing Element update completion by December 2022."*

For previous iterations of staff recommendation, see the July 2020 Task Force memo and the February 2020 Task Force memo.

### 3. What do the maps show?

The maps conceptually show the approximate potential areas that could allow opportunity housing based on staff's recommendation. These maps are preliminary and will be adjusted as this policy work evolves and refinements are made.

### 4. Which Urban Villages are considered “Regional Transit Urban Villages” and “Local Transit Urban Villages”?

#### Regional Transit Urban Villages

- VT2 - Berryessa BART / Berryessa Rd / Lundy Av (v)
- VT3 - Five Wounds BART
- VT4 - The Alameda (East)
- VT6 - Blossom Hill / Hitachi

#### Local Transit Urban Villages (Existing Lightrail)

- VR8 - Curtner Light Rail / Caltrain (v)
- VR9 - Race Street Light Rail (v)
- VR10 - Capitol / 87 Light Rail (v)
- VR11 - Penitencia Creek Light Rail
- VR12 - N. Capitol Av / Hostetter Rd (v)
- VR13 - N. Capitol Av / Berryessa Rd (v)
- VR14 - N. Capitol Ave / Mabury Rd
- VR15 - N. Capitol Av / McKee Rd (v)
- VR17 - Oakridge Mall and Vicinity (v)
- VR18 - Blossom Hill Rd / Cahalan Av
- VR19 - Blossom Hill Rd / Snell Av
- CR20 - N. 1st Street
- CR21 - Southwest Expressway (v)

#### Local Transit Urban Villages (Planned BRT/Lightrail)

- VR22 - Arcadia / Eastridge (potential) Light Rail (v)
- VR23 - E. Capitol Expy / Silver Creek Rd
- CR28 - E. Santa Clara Street
- CR29 - Alum Rock Avenue
- CR30 - The Alameda (West)
- CR31 - W. San Carlos Street
- CR32 - Stevens Creek Boulevard

### 5. Would areas outside of the conceptual areas Transit Urban Villages qualify for Opportunity Housing?

As proposed, single family neighborhoods could have properties that qualify to build opportunity housing if they meet the proposed criteria of sharing a property line with: (1) a property that has existing multiple units on a Residential Neighborhood designated property or (2) a higher density

land use designation such as Mixed-Use Neighborhood, Transit Residential, Urban Residential, Downtown, and Urban Village.

An example of criteria (1) above would be allowing a property with a Residential Neighborhood designation to develop up to four units if it shares a property line with a property that also has a Residential Neighborhood land use designation and is currently developed with a duplex. An example of criteria (2) above would be allowing a property with a Residential Neighborhood designation to develop up to four units if it shares a property line with a single family home that has a Mixed-Use Neighborhood land use designation.

## **6. How did staff choose the parameters in its recommendation?**

The approved General Plan 4-Year Review Scope of Work included direction for staff and the Task Force to explore allowing single-family parcels to redevelop up to 4 units per parcel. It also included several stipulations, with one of them pertaining to the qualifying criteria of properties that would be allowed to develop with Opportunity Housing. The Scope of Work outlined that it should be limited “to parcels proximate to transit-oriented Urban Villages or immediately adjacent to residential parcels with existing medium-density building types, e.g., duplexes or triplexes.”

Staff interpreted “proximate” to mean half-mile and “transit-oriented Urban Villages” to mean Regional Transit Urban Villages and Local Transit Urban Villages. The half-mile distance (approximately a 10-minute walk) was chosen because it is the widely accepted walkable distance standard for transit-oriented development.

Staff has not recommended a gradation of higher density towards Urban Villages, but are open to different ideas on how to shape the criteria.

## **7. What are High Resource Areas and why is it analyzed if it is not in the criteria?**

High Resource Areas are areas of higher opportunity as mapped by the California Fair Housing Task Force. Staff analyzed the qualifying Opportunity Housing areas with Higher Resource Areas (moderate to highest resource areas) to see how many qualifying areas would be in Higher Resource Areas. Higher Resource Areas typically have the characteristics of minimal residential segregation, less income inequality, high performing primary schools, greater social capital, and greater family stability. They provide access to certain amenities or community attributes that are believed to increase economic mobility for their residents. Staff concluded that approximately 59% of the qualifying areas in staff’s recommendation would be in Higher Resource Areas, therefore, potentially providing additional housing opportunities for families that typically could not have access to these resources.

The Tax Credit Allocation Committee (TCAC) and the Department of Housing and Community Development (HCD) Opportunity Map shows where these areas are and include four domains and many subsequent indicators:

1. Economic
  - a. Poverty
  - b. Adult Education
  - c. Employment
  - d. Job Proximity

- e. Median Home Value
- 2. Environmental
  - a. CalEnviroScreen 3.0 indicators
- 3. Educational
  - a. Math Proficiency
  - b. Reading Proficiency
  - c. High School Graduation Rates
  - d. Student poverty Rate

For more information visit:

<https://www.treasurer.ca.gov/ctcac/opportunity/draft-2020-tcac-hcd-methodology-december.pdf>

**8. If a property already has four units, would they be allowed to include more units?**

No, if a property with a Residential Neighborhood land use designation already has four units, they would be considered existing opportunity housing, maxing out at four units. The property would not be allowed to build additional units as currently recommended. However, the property could still develop ADUs consistent with the City's ADU Ordinance and State law (see question 13).

**9. What will be the development standards for opportunity Housing?**

The development standards for opportunity housing, including allowable height and square footage, as well as parking requirements, would need to be established in the next steps after consideration of the conceptual policy framework by the City Council in the spring of 2021. Both the Zoning Code and the Citywide Design Standards & Guidelines document would determine these standards. Additional research and public outreach will inform these requirements.

**10. What would be the application process be for Opportunity Housing?**

Although the permit process would be established during the next phase of work, after Council consideration of the conceptual framework, staff anticipates a permit process similar to that of single-family homes; projects that conform to the zoning ordinance and established urban design standards would be by-right, with no public hearing, unless the property is considered a historic property in which it would have to go through a discretionary permit process.

**11. Would opportunity housing have environmental impacts?**

The qualifying Opportunity Housing criteria that staff has recommended are for areas that have been developed previously. This is also commonly referred to as "infill" development. Because opportunity housing is likely to occur as infill development projects, significant environmental impacts of development projects are not anticipated. However, environmental analysis under California Environmental Quality Act (CEQA) will evaluate the conceptual opportunity housing policy framework as part of the General Plan Four-Year Review, and again during the Implementation Framework more robustly once the project description and extent of opportunity housing is more defined.

The General Plan EIR established a maximum residential capacity which is distributed among Growth Areas in the city. Most areas that qualify under the approved opportunity housing criteria are unlikely to be within the Growth Area boundaries. Staff will need to finalize the capacity tracking

methodology prior to City Council consideration of future actions (General Plan amendments, Zoning Ordinance updates) to implement Opportunity Housing.

## **12. How would the City and State’s Accessory Dwelling Unit (ADU) regulations apply to Opportunity Housing?**

Under the City’s existing ADU Ordinance and as required by state law, duplexes and multifamily are allowed two detached ADUs. For a duplex, one attached ADU may also be allowed. For multifamily lots, a number of attached ADUs equivalent to up to 25% of existing units may also be allowed (for example, a building with 12 units may qualify for 3 attached ADUs). To be consistent with State law, the same rules would need to apply to Opportunity Housing.

Duplexes would be allowed two detached ADUs (one detached ADU each) and one attached ADU for a total of 5 units.

Triplexes and fourplexes would allow two detached ADUs and one attached ADU for a total of 6 units for a triplex and 7 units for a fourplex. The multi-family unit would have to be built and occupied first before it could qualify to build ADUs. Additionally, the attached ADU must be part of the existing structure such as a garage or basement to be built.

See the ADU Universal Checklist for more details:

<https://www.sanjoseca.gov/home/showdocument?id=39038>

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### **New FAQs (Added 8/14/2020)**

## **13. Why is Opportunity Housing being considered now?**

Exploring Opportunity Housing is one of eight scope of work items that the City Council approved for the General Plan Four-Year Review process. The Opportunity Housing concept (also referred to as “Missing Middle Housing” is one that allows multi-unit housing types such as duplexes, triplexes and fourplexes on traditional single-family home lots. After seeing major cities like Portland, Seattle and Minneapolis recently working on or adopting opportunity housing-type programs, City Council directed the exploration of the concept. See the links below for the Housing Crisis Workplan and the General Plan 4-Year Review Scope of Work:

- [September 24, 2019 Housing Crisis Workplan Update Memo](#)
- [June 7, 2019 General Plan 4-Year Review Scope of Work](#)

## **14. When the Task Force votes on a recommendation, what are they voting on and what are the implications? Will the Task Force vote cause an immediate rezoning or change in land use designation for my property?**

The General Plan Task Force is an advisory body to the City Council. For Opportunity Housing, the Task Force is voting on general parameters and action items/next steps for Opportunity Housing. The Task Force is expected to provide input on additional/alternative criteria and work plan items for City Council to consider.

The Task Force vote will not result in an immediate rezoning or change in land use designation on a property. Opportunity Housing is currently in its first steps of exploration as part of the General Plan 4-Year Review process. The Task Force will decide on a conceptual policy framework for Opportunity Housing and make a recommendation to City Council. All Task Force recommendations and results of the short-term next steps will be presented in a package for City Council consideration in spring 2021. Should City Council take action to further pursue Opportunity Housing, then staff would undertake long-term next steps as directed by City Council. Implementation would only take place after all the long-term next steps are completed and considered by City Council. Staff anticipates the Opportunity Housing work plan to be aligned with the mandated General Plan Housing Element update completion by December 2022.

**15. If Opportunity Housing is approved, what does that mean for property owners in affected properties? Is there any danger of eminent domain?**

If policy changes are approved by the City Council to allow Opportunity Housing, it would mean that property owners where Opportunity Housing is allowed would be able to build or convert their existing home into a duplex, triplex, or fourplex, subject to requirements approved by City Council. Opportunity Housing is not eminent domain, and development would remain within the discretion of the property owner.

**16. Why limit Opportunity Housing to primarily a half mile from Transit Urban Villages? Why not do this citywide?**

Staff's recommendation is limited to the Council-approved Scope of Work that directs staff to explore allowing Opportunity housing "proximate to transit-oriented urban villages" and next to existing multifamily housing outside of those areas. The half mile is staff's recommendation and interpretation of "proximate."

**17. In the conceptual maps published for the July 2020 Task Force meeting, why do some boundaries go beyond the quarter or half mile walkshed from a light rail station and in other areas the quarter and half mile boundaries overlap?**

In the conceptual maps, the walksheds that the boundaries are based on are generated from both light rail stations and VTA transit lines within the Urban Village. In some areas the quarter and half mile boundaries are the same due to natural or human-made boundaries (e.g., freeways, creeks, railroad tracks) that limit walkable access. These boundaries are still conceptual and will be adjusted as this policy work evolves and refinements are made.

**18. The Opportunity Housing concept will affect many property owners and residents throughout the City. Why hasn't staff conducted more community outreach and engagement? Will there be a more robust community engagement process?**

Should the City Council direct staff to further explore Opportunity Housing, a citywide community engagement process is planned to collect input on mapping refinements, design standards, Zoning code updates, General Plan revisions, and more. Staff would work with community organizations and leaders to encourage participation and diverse representation reflective of San José in the outreach process.

**19. Why is the General Plan Land Use Overlay mentioned?**

Staff recommends that if/when Opportunity Housing is approved, it would be implemented through a Land Use Overlay. With a Land Use Overlay, a map would provide clarity in showing the specific areas/sites where Opportunity Housing would be allowed.

**20. How do you define disadvantaged communities and communities at risk of displacement?**

Since many data sources defining disadvantaged communities and communities at risk of displacement are regional and lack fine grained details, staff will use the City's Residential Anti-Displacement analysis (to be presented to City Council in September 2020) and the future Opportunity Housing Displacement Risk Assessment (part of long-term work plan) to identify and define these communities in San José on a more local level.

**21. How would Opportunity Housing change/impact existing zoning districts? If I am in a certain zoning district, how would this change my neighborhood?**

It is still too early to tell what the changes to Zoning districts would be, but it may include changes to things like setbacks. The concept of Opportunity Housing is meant to provide more housing options without changing the look/form of surrounding single-family homes so staff does not expect drastic changes. Staff has not recommended specific changes to the Zoning Code at this stage in the work. This will be undertaken as part of the long-term work plan as staff continues to explore Opportunity Housing feasibility and conduct community outreach.

**22. What types of affordable housing incentives are going to be offered and to whom? Will there be any way to mandate and enforce that all new units are made available at below the current market rate?**

Staff is still in an exploration and conceptual phase for Opportunity Housing and affordable housing incentives are undetermined. Staff still needs to research types of incentives and determine if they would work in San José, which is a step identified as part of the long-term work plan.

**23. If Opportunity Housing sites are not mandated to be made available below the current market rate how do we know the estimated cost of purchasing or renting Opportunity Housing?**

Staff will conduct a Cost Effectiveness Study as part of the short-term work plan and present findings to City Council in spring 2021. The study will help inform whether Opportunity Housing would be affordable-by-design as intended. Staff also intends to explore the feasibility of an affordable housing incentive as part of the study based on how feasible building Opportunity Housing types would be.

**24. San Jose has a jobs to housing imbalance. What is San José doing in tandem to its building development growth that will scale its tax base?**

The economic development goals and policies in the General Plan help guide work and policy decisions in improving the City's jobs to housing balance. Additionally, the City's Office of Economic Development focuses on job creation, private investment, revenue generation, and attracting employers to our city.

**25. Is the additional pressure on existing City services (i.e., sewer, trash, schools, parks) being analyzed for Opportunity Housing?**

Evaluation of additional burden on utilities such as the sewer system will occur as part of the environmental analysis outlined in the implementation action steps. Additionally, Opportunity Housing developments would still be subject to permit fees that would fund improvements to existing services.

**26. Parking is already an issue on our street. How will parking be addressed?**

Should the City Council approve the Opportunity Housing concept, parking will be addressed in the implementation action steps, specifically the Zoning Code updates.

**27. Why are designated historic properties and historic areas not exempt from Opportunity Housing?**

Staff recommends allowing the adaptive reuse of a historic property or properties in historic areas because it is possible to have both Opportunity Housing and historic properties exist cohesively. Many of these older homes and neighborhoods already have Opportunity Housing types that were allowed prior to World War II and the establishment of exclusionary zoning practices. Today, the building types and lot sizes in these areas are conducive for Opportunity Housing, and with the right design guidelines and implementation framework, it is possible to achieve both goals of preserving historic neighborhoods while also allowing for Opportunity Housing. Staff does recognize that the Historic Resources Inventory needs to be expanded and seeks public and Task Force input on how to protect historic resources that may not be eligible or listed on the Historic Resources Inventory.

**28. How would Opportunity Housing impact historic properties and historic districts? I don't want the historic character of my neighborhood to be diminished or see historic homes demolished.**

Should Opportunity Housing be implemented, all Opportunity Housing projects would be subject to the permitting process. Opportunity Housing projects would need to go through an administrative process for issuance of building permits and applicable Planning approvals to move forward, like any other development project. They would also need to comply with the Opportunity Housing design standards set forth as part of the long-term work items.

For historic properties, Opportunity Housing projects are not proposed to be by-right and would require a discretionary permit process requiring a public hearing to ensure that the historic elements of a property are maintained and that design standards for historic properties are satisfied.

**29. Is there a link between the Opportunity Housing concept and the IRS's "Opportunity Zone" capital gains tax investment?**

There is no deliberate link between the Opportunity Housing concept and the IRS's Opportunity Zones tax investment; the use of the word "opportunity" is coincidental. However, there may be Opportunity Housing projects that may happen to qualify for the tax investment.

**30. Have the impacts of COVID-19 on housing, jobs, and transit been analyzed as part of Opportunity Housing?**

The analysis of potential long-term COVID-19 impacts would be speculative at this time. However, as time reveals the long-term effects of COVID-19, staff will consider those impacts.

**31. How would pending State law impact Opportunity Housing?**

If SB 1120 is approved by the State legislature, it would allow duplexes and equal lot divisions citywide in any single-family zoning district and would change San José's Opportunity Housing proposal to consider additional density (e.g., allowing triplexes and fourplexes) in areas close to Transit Urban Villages and adjacent to existing or planned medium density residential. This bill would also not require cities to allow Accessory Dwelling Units (ADUs) with duplexes (under the current State ADU law, cities are required to allow ADUs on properties with duplexes and multifamily developments).

If SB 902 passes, it would allow cities to up-zone any parcel up to 10 units near transit and jobs and such zoning ordinance would be exempt from CEQA, making it easier to implement Opportunity Housing.

If AB 3040 passes, it would allow Opportunity Housing sites, a new housing type, to be counted towards the City's Regional Housing Needs Allocation (RHNA) inventory count. All cities in California are allocated a number of housing production targets (fair share of housing production) and Opportunity Housing sites would help meet those targets.