



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**SUBJECT:** SEE BELOW

**FROM:** Planning Commission

**DATE:** May 29, 2024

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**COUNCIL DISTRICT:** Citywide

**SUBJECT: PP24-004 - EMERGENCY RESIDENTIAL SHELTERS. AN ORDINANCE AMENDING VARIOUS SECTIONS OF TITLE 20 OF THE SAN JOSÉ MUNICIPAL CODE (ZONING ORDINANCE OR ZONING CODE) RELATED TO EMERGENCY RESIDENTIAL SHELTERS**

## **RECOMMENDATION**

The Planning Commission voted 6-5-0 to recommend the City Council take the following action:

1. Adopt an ordinance amending various sections of Title 20 (Zoning Ordinance or Zoning Code) of the San José Municipal Code to amend the definition of emergency residential shelters, amend the allowed use of emergency residential shelters, through use permit and by right, in the Commercial Pedestrian Zoning District, Commercial Neighborhood Zoning District, Commercial General Zoning District, Public/Quasi Public Zoning District, and Urban Village and Mixed Use Zoning Districts, and amendments to allow a streamlined ministerial approval process for emergency residential shelters.

## **SUMMARY AND OUTCOME**

Approval of the proposed Municipal Code amendments will amend various chapters within Title 20, Zoning Code, as described in the Analysis section below, to address the City's inadequate shelter capacity. The amendments will permit emergency residential shelters with 100 beds or fewer by right through a ministerial approval process in the identified zoning districts.

## **BACKGROUND**

The proposed Zoning Code update would incorporate required Zoning Code modifications to (a) comply with state law, specifically Assembly Bill 2339 (2022), (b) comply with Housing Element recommendations, and (c) ensure that Title 20 of the Zoning Code is consistent with the provisions of Assembly Bill 2176 and the Emergency Shelter Crisis, as outlined in Title 5.

Assembly Bill 2339 requires that emergency residential shelters be permitted by right in at least one zoning district that allows for residential, including mixed use. This ordinance amends the permitted use of “emergency residential shelters” in zoning districts that already allow for them. The identified zoning districts include Commercial Pedestrian, Commercial Neighborhood, Commercial General, Public/Quasi-Public, and Urban Village and Mixed Use. These zoning districts already permit, by right, Low Barrier Navigation Centers, which are defined as emergency residential shelters under Assembly Bill 2339.

## **ANALYSIS**

A complete analysis of the Zoning Ordinance amendments is contained in the Planning Commission staff report dated May 22, 2024 (attached).

## **EVALUATION AND FOLLOW-UP**

If the proposed Zoning Code update changes are approved by City Council, the new Ordinance will be effective 30 days after the second reading.

## **COORDINATION**

The preparation of the proposed ordinance and this memorandum were coordinated with the City Attorney’s Office.

## **PUBLIC OUTREACH**

This memorandum will be posted on the City’s Council Agenda website for the June 11, 2024, City Council meeting.

Staff conducted various outreach meetings with interested stakeholders throughout March and April 2024 and held a community meeting on April 11, 2024. The attached Planning Commission staff report contains a description of stakeholder and community outreach related to this ordinance.

Staff followed Council Policy 6-30: Public Outreach Policy regarding public outreach for this proposal. A notice of the community meeting was posted on the City’s website. A public hearing notice, including the Planning Commission and City Council hearing dates, was published in the San José Post-Record and emailed to a list of interested groups and individuals. Staff posted the hearing notice, staff report, and draft ordinance on the PBCE Department website. Staff has been available to respond to questions from the public.

### **COMMISSION RECOMMENDATION AND INPUT**

On May 22, 2024, the Planning Commission conducted a public hearing on the proposed Zoning Code updates. Staff presented a background and summary of the proposed changes for the Commission. There were no comments from the public.

Commissioner Cantrell inquired how many congregate shelters would be developed as a result of the proposed zoning code updates and how many beds those congregate shelters would represent. Staff explained that capacity calculations were done based on a vacant sites analysis to determine what the additional capacity would be using vacant sites within the identified zoning districts, which is 1,900 beds. Staff clarified that this capacity exercise does not predict where or when these shelters will open. Staff also clarified that while the existing definition of emergency residential shelter states a building, singular, staff intends to further update the definition in the next phase of work to be more inclusive of non-congregate shelter, e.g., including structures, a series of structures or buildings, tiny homes, and prefabricated stacked modular buildings.

Commissioner Bickford inquired about the identified zoning districts, and whether all zoning districts outside of residential would now be available for emergency housing. Staff noted that each of the identified zoning districts already allow for emergency residential shelters through a use permit and Low Barrier Navigation Centers by right. Staff clarified that the allowance of emergency residential shelters is not being added to new zoning districts, the process of how they are being permitted is what is changing.

Commissioner Oliverio inquired about the level of AB 2339 compliance across the state and which other cities in the region are in compliance. Staff responded that compliance across the state varies because some cities may have already been in compliance, did not have a deficit or had a smaller deficit in capacity, or are not in compliance because they do not yet have an adopted or certified Housing Element. Staff noted that within the region, the City of Mountain View is in compliance.

Commissioner Oliverio further inquired on whether staff was going above and beyond in their identification of zoning districts and whether low barrier is a requirement of AB 2339. Staff explained that while the identification of more than one zoning district can be considered going above and beyond, the zoning districts identified already allow for emergency residential shelters through a use permit and Low Barrier Navigation Centers by right through a different state law (AB 101). Since Low Barrier Navigation Centers are now considered emergency residential shelters under AB 2339, staff is proposing updating the permitting process within the zoning districts identified to align both uses (emergency residential shelter and Low Barrier Navigation Center) so there is no conflict or misalignment between the uses. Staff further explained that through AB 2339, with Low Barrier Navigation Centers now being considered emergency residential shelters, low barrier to entry, as a form of interim intervention, is a requirement. Staff would not have discretion to remove the requirement of low barrier and can only evaluate projects on the objective standards prescribed in AB 2339.

Commissioner Oliverio further inquired whether staff had any concerns about the identified zoning districts, noting that there would be no public hearing or input from community members, and requested clarification on existing capacity. Staff responded that they are comfortable with the identified zoning districts because those zoning districts already allow for Low Barrier Navigation Centers by right through existing state law, which meets the definition of emergency residential shelters as codified within AB 2339. Staff clarified that they are not aware of any significant concerns or issues around Low Barrier Navigation Centers within these zoning districts. Staff also clarified for emergency residential shelters with over 100 beds, a use permit would be required which would give the community an opportunity to provide input. Staff noted that since 2010, only two project sites have gone through the use permitting process. Staff clarified that as part of the exercise on capacity, using a vacant sites analysis, there are currently 4,450 beds in CIC. The additional 1,900 beds in the identified zoning districts would provide the capacity required by law, with a total of 6,350, for the 2023 PIT Count of 6,266. Staff further noted that conducting a nonvacant sites analysis would require much more rigor, similar to the process of conducting the sites inventory for the Housing Element, and would require evidence that the existing use could be discontinued and converted into emergency residential shelter.

Commissioner Tordillos inquired whether shelter operators expressed interest in a higher number (150) for maximum occupancy by right, and what additional costs or time would be added onto the operator for a use permit. Staff noted there were several conversations about the number for maximum occupancy by right and wanted to balance the number between shelter operators, community input, and capacity of existing shelters which mostly range around 100. Staff also wanted a number that would balance between both congregate and non-congregate shelters as staff would not have discretion on operations plans. Staff also noted that a Conditional Use Permit could cost approximately \$25,000 and with an approximately seven-month review timeline, although it could be longer.

Commissioner Tordillos noted a recent tour of a San Mateo County navigation center operated by LifeMoves, which also operates in the City of San José, and that the navigation center was clean, orderly, and operated well through a stacked modular design, and would like to see similar development in the City of San José.

Commissioner Ornelas-Wise commented on the importance of providing shelter and housing for the City's unhoused residents as well as preserving neighborhoods. Commissioner Ornelas-Wise noted concerns about overconcentration and inquired whether staff would have the ability to set permit conditions on projects allowed by right. Staff explained that through the ministerial approval process, projects are still subject to staff review and staff can coordinate with development review partners to apply conditions of approval for standard permitting conditions, such as nuisance and noise control.

Commissioner Lardinois expressed appreciation for the next phase of work staff will execute to include non-congregate shelters and wanted to confirm whether staff will be looking into length of stay as part of that next phase of work.

Staff confirmed that extending the length of stay would be part of the next phase of work.

Commissioner Rosario commented on the unanimous passing of Senate Bill (SB) 1395 and commended staff on taking the steps to push the City forward, as SB 1395 revises the definition of Low Barrier Navigation Center to specify that they can be non-congregate and relocatable.

Prior to the vote, Commissioner Oliverio requested to document the reasons for his “no” vote: other cities are not pulling their fair weight in the county or state, by right processes eliminate democracy and the opportunity to provide input in front of elected representatives, overall skepticism of state overreach of local controls, and preference for a narrower adoption of AB 2339.

Commissioner Ornelas-Wise made a motion to recommend approval of the staff recommendation. Commissioner Cantrell seconded this motion. The Planning Commission voted 6-5-0, with Commissioners Barocio, Bickford, Casey, Garcia, and Oliverio voting no, to recommend the City Council approve this item per staff’s recommendation.

## **CEQA**

Not a Project, File No. PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment.

## **PUBLIC SUBSIDY REPORTING**

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City’s Open Government Resolution.

/s/  
Chris Burton  
Secretary, Planning Commission

For questions, please contact Jerad Ferguson, Principal Planner, at email or (669) 223-1160.

## **ATTACHMENT**

Planning Commission Staff Report dated May 22, 2024



# Memorandum

**TO:** PLANNING COMMISSION

**FROM:** Christopher Burton

**SUBJECT:** PP24-004

**DATE:** May 22, 2024

**COUNCIL DISTRICT:** Citywide

<b>Project</b>	An amendment to Chapter 20.200 of the Zoning Ordinance to amend the definition of emergency residential shelter, amendments the Use Regulations tables in Chapter 20.40 'Commercial Zoning Districts and Public/Quasi-Public Zoning District,' Chapter 20.50, 'Industrial Zoning District,' and Chapter 20.55 'Urban Village and Mixed Use Zoning Districts' to allow emergency residential shelters through use permits and by right, and amendments to Chapter 20.195, 'Ministerial Approvals' to allow a streamlined ministerial approval process for emergency residential shelters.
<b>Project Description</b>	An ordinance of the City of San José amending Title 20 (Zoning Ordinance or Zoning Code) of the San José Municipal Code to amend the definition of emergency residential shelter in Chapter 20.200, amend the emergency residential shelter use within Table 20-90 of Section 20.40.100 of Chapter 20.40, 'Commercial Zoning Districts and Public/Quasi-Public Zoning District,' Table 20-110 of Section 20.50.100 of Chapter 20.50, 'Industrial Zoning Districts,' and Table 20-138 of Section 20.55.203 of Chapter 20.50, 'Urban Village and Mixed Use Zoning Districts,' and amendments to allow a streamlined ministerial approval process for emergency residential shelters in Chapter 20.195, 'Ministerial Approvals.'
<b>CEQA Clearance</b>	Not a Project, File No. PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment.
<b>Project Planner</b>	Kristine Do

## RECOMMENDATION

Staff recommends that the Planning Commission recommend that the City Council take all of the following actions:

1. Adopt an ordinance amending various sections of Title 20 (Zoning Ordinance or Zoning Code) of the San José Municipal Code to amend the definition of emergency residential shelters, amend the allowed use of emergency residential shelters, through use permit and by right, in the Commercial Pedestrian Zoning District, Commercial Neighborhood Zoning District, Commercial General Zoning District, Public/Quasi Public Zoning District, and Urban Village and Mixed Use Zoning Districts, and amendments to allow a streamlined ministerial approval process for emergency residential shelters.

## PROJECT BACKGROUND

The proposed Zoning Code update would incorporate necessary Zoning Code modifications to (a) comply with state law, specifically Assembly Bill 2339 (2022), (b) comply with Housing Element recommendations, and (c) ensure that Title 20 of the Zoning Code is consistent with the provisions of Assembly Bill 2176 and the Emergency Shelter Crisis, as outlined in Title 5. Assembly Bill 2339 requires that emergency residential shelters be permitted by right in zoning districts that allow for residential, including mixed use. This ordinance amends the permitted use of “emergency residential shelters” in zoning districts that already allow for them. The identified zoning districts include Commercial Pedestrian, Commercial Neighborhood, Commercial General, Public/Quasi-Public, and Urban Village and Mixed Use. These zoning districts already permit, by right, Low Barrier Navigation Centers, which are defined as emergency residential shelters under Assembly Bill 2339.

### Housing Element 2023-2031

Housing Element (GOV § 65583) law requires the identification of one or more zoning districts where emergency shelters are allowed without a discretionary permit to provide adequate sites for emergency shelters to meet the capacity needs for the City’s unhoused population. To comply with Housing Element Law, San José modified the Combined Industrial/Commercial (CIC) Zoning District through Ordinance No. 28460 in December 2008, permitting both conditionally and by right, emergency residential shelters in this industrial zoning district. Emergency residential shelters with 50 beds or fewer are permitted by right, while emergency residential shelters with more than 50 beds require a Conditional Use Permit. As analyzed in the Housing Element, [Chapter 4: Constraints on Housing](#), the total theoretical maximum beds possible citywide, permitted by right (for capacity purposes) in CIC zoned sites is 4,450.

Every two years (odd numbered years), during the last 10 days in January, the City conducts an annual Point-In-Time (PIT) Count of unsheltered people experiencing homelessness. Due to the COVID-19 pandemic, the City of San José did not conduct a PIT Count in 2021. Data from the 2019 PIT Count was used in the 6<sup>th</sup> Cycle Housing Element, which counted 6,097 persons experiencing homelessness. The deficit between the maximum beds permitted by right in CIC zoned sites and the 2019 PIT Count is 1,647. Therefore, the City did not meet its capacity needs for emergency shelter beds. Staff included a program in the Housing Element to address this deficit (*Strategy H-14: Emergency Shelters*). The most recent PIT Count, conducted in 2023, showed an increase of persons experiencing homelessness with a total count of 6,266, bringing the deficit to 1,816 beds.

Strategy H-14 outlines a program to update the zoning code to add additional zoning districts, in addition to CIC, where emergency shelters are permitted by right to meet the capacity needs of the City’s unhoused population. Updates to the zoning code must be completed within one year of Housing Element adoption to ensure compliance with the requirements of Government Code Section 65583 (Assembly Bill 2339, 2022). City Council adopted the 6<sup>th</sup> Cycle Housing Element on June 20, 2023. To ensure compliance with the requirements of AB 2339, updates to the zoning code must be completed no later than June 20, 2024.

### AB 2339 (2022)

On September 28, 2022, the governor signed Assembly Bill (AB) 2339, an act to amend Sections 65583 and 65863 of the Government Code, relating to land use. The bill revises the requirements of the housing element to require the identification of one or more zoning districts that allow residential uses, including mixed uses, where emergency residential shelters are allowed by right. The identified zoning districts must include sites that are suitable for residential use and meet the bill’s prescribed standards, including, but not limited to, vacant sites that are zoned for residential use. Emergency residential shelters are subject only to the written, objective standards identified in Government Code Section 65583(a)(4)(B).

The bill also expands the definition of emergency residential shelters to include other interim interventions, including, but not limited to, navigation centers, bridge housing, and respite or recuperative care.

To comply with state law, staff is proposing an update to the Zoning Code to amend the allowed use of emergency residential shelters, through use permits and by right, to identified zoning districts that allow residential uses, including mixed uses. The identified zoning districts include Commercial Pedestrian, Commercial Neighborhood, Commercial General, Public/Quasi-Public, Urban Village, Mixed Use Commercial, and Mixed Use Neighborhood.

### **Emergency Shelter Crisis**

On September 27, 2016, the governor approved AB 2176 which authorizes political subdivisions to declare a shelter crisis and allow persons unable to obtain housing to occupy designated public facilities, as defined, throughout the duration of the crisis. The law provides that certain state and local laws, regulations, and ordinances are suspended during a crisis if compliance would prevent, hinder, or delay the mitigation of the effects of the crisis. The City has declared a shelter crisis and through this declaration has suspended Zoning Code and General Plan requirements, among others, where applicable, outlined in Title 5 (Housing) of the San José Municipal Code.

The provisions and standards set forth in Title 5 and AB 2176 are applicable to emergency residential shelters established pursuant to the declared shelter crisis under Government Code Section 8698 et seq. and located in new or existing buildings or structures owned, operated, or constructed for or on behalf of the City of San José on land owned or leased by the City of San José. The City currently operates [six interim housing communities](#) in conjunction with shelter operators, including 2078 Evans Lane and Rue Ferrari. Emergency residential shelters that do not fall under the provisions of the shelter crisis are required to follow state and local standards and laws. This includes the specific use regulations outlined for emergency residential shelters in Title 20 that are being updated through the proposed ordinance changes in the staff recommendation.

## **ANALYSIS**

### **Emergency Residential Shelter Definition**

California Government Code Section 65583 specifies that emergency residential shelters are inclusive of other interim interventions. The existing definition in [Section 20.200.360](#) of the San José Municipal Code states that an emergency residential shelter is a building where temporary lodging is provided to persons who are homeless. It does not specify that emergency residential shelters are inclusive of other interim interventions. The proposed expansion of the definition would add a reference to California Government Code Section 65583 to maintain a consistent definition with what is established in state law.

The amendment of the definition also makes a minor text change to rephrase “persons who are homeless” to “individuals and households experiencing homelessness.” Rephrasing this text adheres to best practices for technical language, particularly using people-first language which emphasizes the person before their conditions.

### **Objective Standards**

California Government Code Section 65583 requires that emergency residential shelters permitted by right be subject only to the written, objective standards outlined within Section 65583. The current maximum number of beds permitted to be served nightly by an emergency residential shelter before requiring a Conditional Use Permit in the Combined Industrial/Commercial Zoning District is 50. Staff



proposes increasing the maximum number of beds from 50 to 100 to align with the scale and scope of Emergency Interim Housing communities in San José, half of which have capacities over 50: 5898 Rue Ferrari has 82 units, 6066 Monterey Rd operates 78 units, and 211 Asbury St operates 96 units. The Homeless Response Division of the Housing Department has identified additional projects looking to develop with capacity at or greater than 100. The Boccardo Reception Center (BRC), a homeless service center operated by a local nonprofit, HomeFirst, currently operates at a capacity of 250 beds. Other Bay Area cities, such as San Francisco and Oakland, have maximum capacities of 100.

In addition to aligning with the scale of existing Emergency Interim Housing communities, increasing maximum bed capacities will allow the City to better meet the requirements of AB 2339. Pursuant to AB 2339, the number of people that can be accommodated on any site shall be demonstrated by dividing the square footage of the site by a minimum of 200 square feet per person. There are approximately 19 vacant sites in the identified zoning districts in San José where emergency residential shelters would be permitted by right, for a total of 201,577 square feet. Vacant sites range from approximately 4,100 to 21,025 square feet. Having a diverse range in size for vacant sites provides additional opportunities for the development of shelters.

The average square footage per site is approximately 9,342. Dividing this number by the minimum 200 square feet per person gives us an average capacity of 53 beds per site. If the maximum number of beds permitted to be served nightly remains 50, the City's capacity for emergency shelter beds would decrease. By increasing the maximum number of beds from 50 to 100 for these 19 vacant sites, the City would achieve a capacity of 1,900. A capacity of 1,900 from these 19 vacant sites would address the City's deficit of 1,816 beds.

Based on the City's [Homeless Census and Survey reports](#), the number of individuals experiencing homelessness captured within the PIT count has steadily risen since 2015. A capacity of 1,900 provides the City with a buffer of 84 beds based on the most recent PIT count conducted in 2023. The next PIT count will be conducted next calendar year, 2025. Staff proposes the maximum number of beds permitted to be served nightly increases from 50 to 100 to be inclusive of successful Emergency Interim Housing communities and proposed projects and needs expressed by shelter operators and providers, and to encourage emergency residential shelter development at various scales.

This first phase of zoning code updates is intended to address the City's capacity deficit by the statutory deadline of June 20, 2024. In the second phase of zoning code updates, staff is looking to increase the maximum length of stay and remove the requirement for persons to be enrolled in drug/alcohol recovery programs to extend length of stay to 18 months.

#### Phase 2 Emergency Shelter Zoning Updates

[Section 20.80.500](#) lays out the specific use regulations for emergency residential shelters, restricting the length of stay to 60 days unless a Conditional Use Permit is issued, which could allow for extended stays not to exceed 18 months. California Health and Safety Code Section 50801 limits emergency residential shelter occupancy to six months (180 days) or less.

Based on the [San José 2023 PIT Report](#), there is a significant number of individuals whose length of time prior to receiving permanent housing is one year or more. Five percent of individuals enduring an episode of homelessness had been homeless for 30 days or less, while 27% had been homeless between one to 11 months and 65% had been homeless for one year or more. During the City Council study session on the homelessness crisis in San José, which took place on March 28, 2024, service providers presented data from Fiscal Year 2021-2023, highlighting that single adults needed longer stays to successfully exit to permanent housing. The slideshow presented by LifeMoves identified that the majority of single adults needed anywhere between 90 and 365+ days to successfully exit to permanent housing. With the average length of stay exceeding 60 days, staff believes the current maximum length of stay results in a barrier for

shelter providers. Additionally, staff believes the requirement for persons to be enrolled in drug/alcohol recovery programs to extend length of stay past 60 days is not considered a “Housing First” or low barrier to entry approach to mitigating homelessness.

Staff will continue to explore this work to address the length of stay objective standard in a second phase of zoning code updates later this year.

### **Allowed Uses and Permit Requirements**

AB 2339 requires the identification of zoning districts that allow for residential, including mixed-use, where emergency shelters are allowed by right. To comply with state law, staff proposes amending the following allowed use tables for the Commercial Zoning Districts, Public/Quasi-Public Zoning District, and Urban Village and Mixed Use Zoning Districts to permit emergency residential shelters, both conditionally and by right:

- Chapter 20.40 – Commercial Zoning Districts and Public/Quasi-Public Zoning Districts (Table 20-90)
- Chapter 20.55 – Urban Village and Mixed Use Zoning Districts (Table 20-138)

In addition to the above zoning districts that allow for residential, including mixed use, staff proposes amending the allowed use table in Chapter 20.50 – Industrial Zoning Districts (Table 20-110) to update the maximum number of beds allowed by right for consistency with the other zoning districts.

Currently, emergency residential shelters may be permitted with a Special Use Permit or Conditional Use Permit in these identified zoning districts. To comply with state law, staff proposes that emergency residential shelters at or below the maximum number of beds or persons (100) permitted to be served nightly by the facility be permitted by right. If an emergency residential shelter has 100 beds or fewer, the project would not be subject to a discretionary review process and would be reviewed through a ministerial process. If an emergency residential shelter has more than 100 beds, the project would require a use permit and follow the existing process for permitting within its respective zoning district.

To meet the statutory deadline for AB 2339 compliance, staff is proposing adding additional line items to the zoning use tables identifying that emergency residential shelters outside the Airport Influence Area with 100 or fewer beds are a permitted use while emergency residential shelters outside the Airport Influence Area with more than 100 beds require a use permit. Staff is not proposing any changes to properties within the Airport Influence Area. Staff will propose subsequent actions in the coming months to modify the zoning use table for sites within the Airport Influence Area and refer these actions to the Airport Land Use Commission, as required by state law. Staff is proposing adding additional line items, as it relates to emergency residential shelters outside the Airport Influence Area, to each of these use tables in the interim for the City to meet its capacity needs and comply with state law by permitting emergency residential shelters by right in zoning districts that allow for residential, including mixed use, by the statutory deadline of June 20, 2024.

In compliance with AB 101, which requires Low Barrier Navigation Centers to be permitted by right in zoning districts that allow for mixed use and nonresidential zones permitting multifamily use, Low Barrier Navigation Centers are already permitted as an allowed use by right in the Commercial Pedestrian, Commercial Neighborhood, Commercial General, Public/Quasi-Public, Urban Village and Mixed Use Zoning Districts. Since then, the state has expanded the definition of emergency residential shelter to account for other interim intervention, specifying that Low Barrier Navigation Centers are now considered emergency residential shelters. Because Low Barrier Navigation Centers are not permitted within Commercial Office, staff proposes removing the allowance of emergency residential shelters within Commercial Office to maintain consistency with state definitions.

## General Plan Conformance

The proposed amendments align with the goals of the Envision San José 2040 General Plan, specifically the policies under Goal H-1 Housing – Social Equity and Diversity, which is to provide housing throughout the city in a range of residential densities and to address the needs of an economically, demographically, and culturally diverse population.

1. Policy H-1.2: Facilitate the provision of housing sites and structures across location, type, price and status as rental or ownership that respond to the needs of all economic and demographic segments of the community including seniors, families, the homeless and individuals with special needs.
2. Policy H-1.7: Comply with State and Federal laws prohibiting discrimination in housing and that support fair and equal access to housing.

Compliance with AB 2339 further promotes the policies under Goal H-1 Housing – Social Equity and Diversity. The amendments to the allowed use table align with Policy H-1.2 and H-1.7 to facilitate the provision of housing sites for all segments of the community, including those experiencing homelessness, and continued compliance with state and federal law.

## CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Not a Project, File No. PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment.

## PUBLIC OUTREACH

Outreach meetings were held with shelter service providers and operators to discuss and gather feedback on the proposed zoning code updates. Staff met with two shelter providers that operate both public and private projects, HomeFirst and LifeMoves, on March 25, 2024, and April 4, 2024, respectively. Staff had a follow up meeting with LifeMoves on April 10, 2024. Staff learned that there is a shift toward non-congregate shelters, which are often more trauma-informed and safer than congregate shelters. Non-congregate shelters provide clients with privacy and allows them to better plan for transitioning out of homelessness. However, because they are more expensive to develop and require more space, they are not always financially feasible. Congregate shelters are still a viable shelter type as they can provide temporary lodging for a larger number of people experiencing homelessness. Having a wide range of vacant sites at various sizes would provide opportunities for congregate and non-congregate shelters at various scales.

Staff learned that HomeFirst is considering developing a private shelter near the Boccardo Reception Center, which currently operates at a capacity of 250 beds. HomeFirst envisions this development to operate at a similar capacity (between 100 to 200 beds). Allowing emergency shelters by right would be helpful for their operations and mitigating homelessness. Staff learned that LifeMoves is considering redeveloping some of their sites and would like to increase capacity through stacked modular units, following a non-congregate shelter model at higher density.

Staff also coordinated with Destination: Home on the proposed zoning code updates. Destination: Home was generally supportive of the changes staff are proposing to reduce barriers and suggested staff consider design standards for larger projects and coordinate with Santa Clara County and its Continuum of Care, which have adopted community-wide quality assurance standards. Staff will continue to explore the incorporation of these standards as part of the next phase of zoning code updates.

In discussion with the above stakeholders, staff learned that it is uncommon for emergency residential shelters to have on-site drug or alcohol recovery or treatment programs due to the lack of funding and resources for such implementation. Without these programs, there isn't a need to apply for a Conditional Use Permit for extended stays, which can also be financially infeasible to obtain. Additionally, HomeFirst shared that requiring clients to enroll in drug or alcohol recovery or treatment programs would not be a "Housing First" approach and could be a barrier to housing for some clients.

A community meeting was held on April 11, 2024. Five members of the public attended. One attendee expressed concerns about potential concentration of emergency residential shelters in their neighborhood due to the surrounding allowance of mixed use. Staff informed the attendee that the City is not developing or converting existing uses into emergency residential shelters and applicants will still need to proceed with a ministerial approval process before developing or converting existing uses into emergency residential shelters. Additional factors, such as funding and operations plans, also need to be considered for potential development or conversion. Two attendees expressed general concern about the increasing trend of individuals and households experiencing homelessness seeking shelter in the City, some of whom may be residents of the county or surrounding cities. Staff informed the two attendees that each city is required to comply with AB 2339 and permit emergency residential shelters by right in zoning districts that allow for residential in order to meet their capacity needs based on their homeless reports. If cities fall out of compliance with state law, they would be subject to penalties. The statutory deadline for the City of San José to comply with AB 2339 is June 20, 2024, however the deadlines vary from city to city, which is why other cities may not have yet started work on their required zoning code updates.

Staff was initially considering increasing the maximum number of beds for emergency residential shelters permitted by right from 50 to 150. In response to comments and feedback shared by HomeFirst, LiveMoves, Destination: Home, and community members, staff decided to propose increasing the maximum number of beds for emergency shelters permitted by right from 50 to 100. Many shelter operators and providers voiced that the higher the number, the more financially feasible it would be to develop and operate emergency residential shelters. Due to public concern surrounding operations, staff is proposing to proceed with an increase from 50 to 100 and will continue to explore the maximum number of beds objective standard in phase two of the zoning code updates, taking into consideration the Airport Land Use Commission's feedback and the County's Continuum of Care quality assurance standards around design.

Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the proposed project. A notice of the community meeting was posted on the City website. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

**Project Manager:** Kristine Do

**Approved by:** /s/ Robert Manford, Deputy Director for Christopher Burton, Planning Director

<b>ATTACHMENTS:</b>
Exhibit A: Draft Ordinance

## PP24-004

### Links to Attachments

Click on the title to view document.

<a href="#"><u>Exhibit A: Draft Ordinance</u></a>
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