



Memorandum

TO: PLANNING COMMISSION
SUBJECT: Opportunity Housing and SB 9 Implementation

FROM: Christopher Burton
DATE: December 1, 2021

COUNCIL DISTRICT: Citywide

Type of Permit	Not a permit
Project Planner	Jerad Ferguson
CEQA Clearance	Not a Project, File No. PP17-007, Preliminary direction to staff and eventual action requires approval from a decision-making body.
CEQA Planner	David Keyon

RECOMMENDATION

Staff recommends that the Planning Commission recommend that the City Council take the following action:

1. Decline to move forward with the City’s Opportunity Housing effort at the present time in order to focus on implementation of Senate Bill 9 (SB 9), which requires the City to allow most of the Opportunity Housing types contemplated as part of the Four-Year Review of the General Plan process.
2. Direct staff to develop citywide design standards for implementation of SB 9.
3. Direct staff to explore allowance for “SB 9-type” housing projects within R-2 Zoning Districts and on historic properties that do not qualify under SB 9.

PROJECT BACKGROUND

General Plan Four-Year Review

The *Envision San José 2040 General Plan* (General Plan) is a comprehensive, innovative, and forward-thinking policy document that lays the framework for becoming a fiscally-sound and environmentally sustainable city of great places. Over 5,000 individuals participated in the General Plan update process from 2008 through 2011, and the General Plan was approved unanimously by the City Council on November 1, 2011.

The General Plan sets forth Goals and Policies requiring the City to conduct a review of the Plan every four years. The purpose of the General Plan Four-Year Review (Four-Year Review) is to evaluate significant changes in the planning context and achievement of key General Plan goals. The General Plan requires the City to reconvene a Task Force during each Four-Year Review to provide community and stakeholder engagement in reviewing and evaluating success in the implementation of the General Plan and to recommend any mid-course actions needed to achieve its goals.

Based on the outcome and recommendations from the Four-Year Review Task Force process, the City Council could decide to amend the General Plan goals, policies and actions, and/or the Land Use/Transportation Diagram to further the achievement of the General Plan’s Vision and Major Strategies.

On June 11, 2019, the City Council approved the staff recommended scope of work for the second General Plan Four-Year Review and provided additional scope items as detailed in a [memo issued by Mayor Sam Liccardo, Councilmember Sergio Jimenez, Councilmember Raul Peralez, and Councilmember Sylvia Arenas on June 7, 2019](#). One of the items in the City Council approved scope of work is the subject of this Staff Report, the consideration of “Opportunity Housing.”

1. *Explore allowing single-family parcels currently designated “Residential Neighborhood” to redevelop to 2-4 units per parcel with the following parameters from the outset:*
 - a. *Limit 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.*
 - b. *Develop a set of design guidelines that would maintain current allowed heights and keep setbacks comparable to existing single-family homes to ensure development would be well integrated into neighborhoods.*
 - c. *Allow flexibility on the number of units allowed per parcel that would vary based on lot size, location, and other factors.*
 - d. *Clarify that any redevelopment remains within the discretion of the property owner.*
 - e. *Specify that this would be sensitive to historic neighborhoods.*
 - f. *Validate that opportunity housing projects are cost effective.*

In November 2019, a 42-member Task Force was reconvened to evaluate the scope identified by the City Council. Ten Task Force meetings were held between November 2019 and November 2020. The first four meetings were held in-person; however, just prior to the fifth Task Force meeting, on March 16, 2020, the Santa Clara County Public Health Officer issued a shelter in place order to slow the spread of COVID-19. With the rise of COVID-19 cases and legal orders to keep residents safe and limit new cases, City staff continued to work remotely and transitioned the Task Force meetings to a virtual format after a four-month hiatus. The first virtual meeting was held on June 25, 2020.

All meetings were open to the public, and a total of approximately 1,000 attendees participated in the Task Force Meetings; approximately 110 attended the four in-person meetings and approximately 890 attended the six virtual meetings. All meeting materials including agendas, synopsis, presentations, reports, and Task Force and public correspondence are available on the Planning Division website (<http://www.sanjoseca.gov/GeneralPlanReview>). The subject of this Staff Report and related hearing is limited to Opportunity Housing. The other General Plan Four-Year Review scope of work items will be considered, or have been considered, in separate public hearings. The background of Opportunity Housing, the General Plan Four-Year Review Task Force recommendations and previous staff recommendations related to Opportunity Housing are discussed below.

Opportunity Housing Background

At the [December 19, 2019 Task Force meeting](#), staff provided background information to the Task Force about missing middle housing, which is multi-unit housing similar in scale to single-family. This included presentations from Opticos Design and from a developer who had recently completed construction of a new duplex in the City.

At the [February 27, 2020 Task Force meeting](#), staff presented additional background information related to missing middle housing. This included information about missing middle housing initiatives in other cities across the country and a review of proposed state legislation at that time. Staff also presented an initial policy framework with respect to Opportunity Housing that would allow two to four units of housing on parcels designated Residential Neighborhood. Parcels would be limited to those proximate to local or regional transit Urban Villages, and parcels adjacent to existing medium or high density residential. There would also be

provisions preventing the redevelopment of parcels with rent-controlled units or properties that were renter-occupied. These recommendations aligned directly with scope of work provided by the Council.

There were many public comments at this meeting that were positive and supportive of staff recommendation on opportunity housing as it allows more housing in the City for the housing shortage while also addressing historic racial segregation and inequities. Some community members suggested that Opportunity Housing should be expanded citywide and to consider allowing more units closer to transit. Other community members were concerned that opportunity housing would disrupt historic neighborhoods, the historic resources inventory should be completed prior to implementing the policy, would add pressure on existing infrastructure, lack of early outreach, and the vulnerability it would create for starter neighborhoods that may be attractive to smaller developers to purchase and redevelop. Given time constraints there was not Task Force discussion at this meeting.

At the [July 30, 2020 Task Force Meeting](#), staff recommended establishing a conceptual Opportunity Housing policy framework with a work plan process based on the feedback received from the Task Force and community. The conceptual policy framework would be used as a starting point for further research on Opportunity Housing as part of the work plan. The work plan would involve short-term and long-term tasks including, but not limited to, completing public outreach, a Cost Effectiveness Study, a Displacement Risk Assessment, General Plan amendments, Zoning Code updates, and design standards. Task Force members provided comment and asked detailed clarifying questions of staff regarding their recommendation. There were 42 community members that provided public comment with varying degrees of support, opposition, and general questions and concerns regarding Opportunity Housing. The topic was continued to the next Task Force meeting.

At the [August 20, 2020 Task Force meeting](#), staff presented the Task Force with a further refined draft policy framework and work plan for Opportunity Housing based the feedback received at the previous meeting. This recommendation is detailed further below. Some Task Force members expressed concern that the staff time and resources to implement Opportunity Housing would detract from implementation other General Plan process such as Urban Village planning. Other members were supportive of Opportunity Housing but were concerned with the limited geography defined in the scope of work. These Task Force members were in favor of allowing Opportunity Housing citywide to provide more housing opportunities, and to undo historical exclusionary patterns that reinforce segregation.

Opportunity Housing Recommendations

Staff Recommendation to the Task Force

The final staff recommended policy framework and work plan were the result of feedback from the public that earlier iterations of the Opportunity Housing recommendations were being developed without community engagement, and that more extensive community input should be conducted first. The Four-Year Review process was not scoped or resourced to provide extensive community engagement beyond the Task Force meetings. Based on this feedback, and the limitation of what could be done in as part of the Four-Year Review process, staff modified its proposal to be a work program that proposed action items that should be completed if Council were to move forward with Opportunity Housing. This proposed work program included extensive community engagement. The staff proposal did, however, retain the initial policy recommendation on the geography of where Opportunity Housing should be allowed, as the geography was specified within the scope of work from the City Council. Below is staff's full recommendation to the Task Force on Opportunity Housing:

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 the 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 Standards and Guidelines 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.*

Task Force Recommendation

Many on the Task Force commented that they were concerned that limiting Opportunity Housing to areas proximate to transit would disproportionately impact less affluent neighborhoods and not provide new options for housing within higher resource neighborhoods. Following deliberation, the Task Force recommended approval of the staff recommendation (28 approved, 6 opposed) with the following modification:

Explore allowing up to four units on parcels with a Residential Neighborhood land use designation citywide.

The Task Force agreed with the further action items in the staff recommendation. The Task Force made the following additional recommendation to staff (27 approved, 6 opposed, 1 abstention):

Recommend to staff that during the period of study for Opportunity Housing that staff prioritizes Urban Village implementation.

Senate Bill 9

Governor Newsom signed Senate Bill 9 (SB 9) into law on September 16, 2021. The bill becomes effective on January 1, 2022. SB 9 applies to all cities and counties, and allows for 1) subdivision of a single-family zoned lot into two lots; and 2) construction of two units on a single-family zoned property. SB 10 authorizes a local government to voluntarily adopt a zoning ordinance to allow up to ten dwelling units on any parcel within a

transit-rich area or urban infill site at a height specified in the ordinance. SB 9 and SB 10 were the subject of City Council Study Session entitled *Overview of Senate Bill 9 and Senate Bill 10 and Implications to Planning Policy and Zoning Regulations*. An information memorandum related to this study session provides additional background information on SB 9 and SB 10 **Exhibit B**. The implications of SB 9 and SB 10 as it relates to the previous Opportunity Housing recommendations is discussed in detail in the Analysis section.

ANALYSIS

The City Council approved the scope of work in June 2019 for the General Plan Four-Year Review that included exploring Opportunity Housing that would allow up to two to four units of housing on properties currently restricted to single-family homes.

In bringing the recommendations to the Task Force on Opportunity Housing, staff considered the scope of Opportunity Housing received from the City Council and spent time analyzing which parcels should be included based on proximity to transit and transit-oriented Urban Villages with the context of the scope of work received from the City Council. The Task Force recommended that parcels be considered citywide rather than any specific restriction around proximity to transit. With the passage of SB 9, the City will be required to allow duplexes and lot splits of single-family zone parcels citywide, and this aspect of the discussion around Opportunity Housing is no longer as relevant.

Feasibility Analysis

Following the conclusion of the Task Force meetings, Staff engaged a consultant, Strategic Economics, to prepare a financial feasibility analysis of Opportunity Housing. This follows the direction of the Council approved scope of work item 1.f to *Validate that opportunity projects are cost effective*. The full report is contained in **Exhibit A**. The report contains two sections, the first is a feasibility analysis of 12 prototypes of Opportunity Housing in San José. The second section, completed by the subconsultant Opticos Design, is a citywide parcel testing analysis, that was used to develop the lot configurations used in the 12 prototypes.

The analysis is useful to understand the likelihood, based on financial feasibility, that properties will be redeveloped into two to four units if Opportunity Housing were allowed in the City by City ordinance. While the report was created around the concept of Opportunity Housing, i.e., two to four units per parcel, the analysis is still useful in understanding the implications of SB 9 as many of the Opportunity Housing configurations analyzed would be allowed under SB 9.

Overall, there are several configurations in specific sub-markets within the City where redevelopment of single-family lots into multiple units is financially feasible. However, it is worth noting that there are still many situations where redevelopment is not financially feasible or where site constraints would prevent redevelopment. Extensive or sweeping redevelopment of single-family neighborhoods is unlikely given the findings of this financial feasibility analysis. This conclusion is also supported in a July 2021 study¹ released by the Turner Center for Housing Innovation at UC Berkeley. A key finding of this study was that 5.4 percent of all single-family lots in the state would be feasible for redevelopment under SB 9.

Sub-market Tiers

The 12 sub-areas used for the Development Fee Framework and the Inclusionary Housing Ordinance² were used as the basis for dividing the City into “market tiers” to reflect the areas of the city that have different land values, sales prices, and rents that would impact financial feasibility. The consultant analyzed sales data over time from Redfin for various for-sale home types across the City, as well as rental data from Costar across the City over time in order to classify each sub-area into a market tier. Figures 3 and 4 from the report by Strategic Economics (below) show the 12 sub-areas divided into three tiers for rental and three tiers for for-sale. Tier 1 represents the highest-market value and Tier 3 the lowest. There are slight variations between the

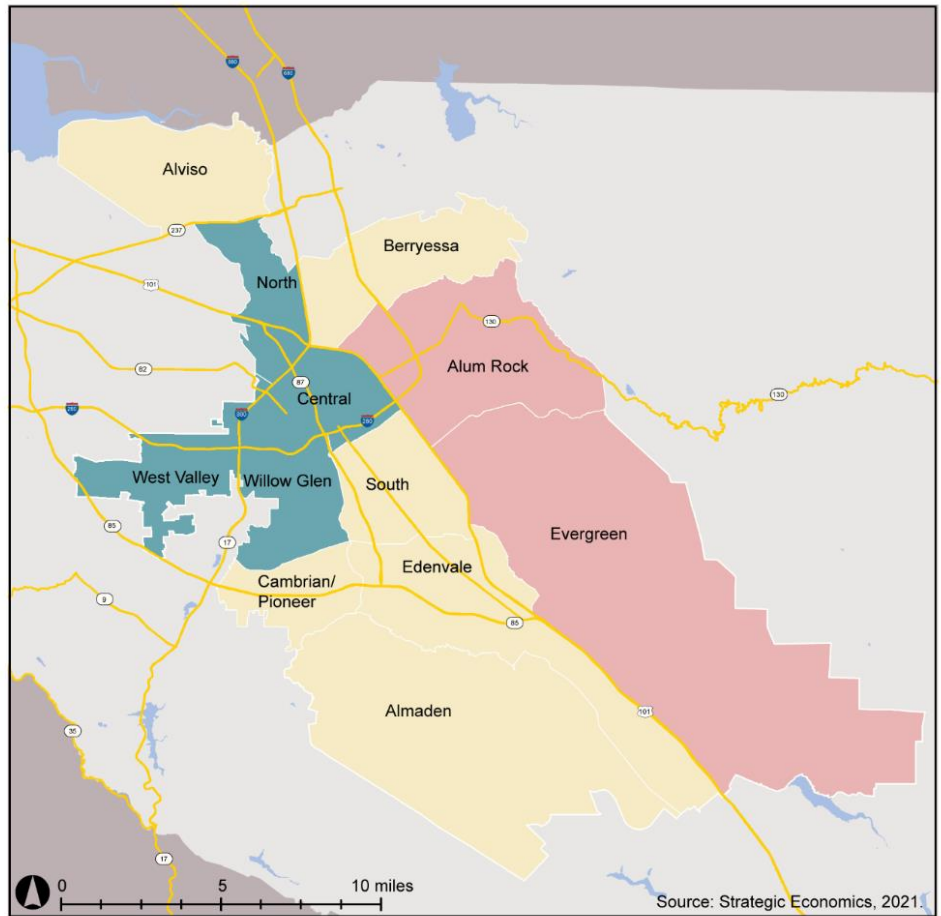
¹ <https://turnercenter.berkeley.edu/wp-content/uploads/2021/07/SB-9-Brief-July-2021-Final.pdf>

² <https://csj.maps.arcgis.com/apps/webappviewer/index.html?id=8518bc095ae54f4ea025d7743c650881>

two where a rental market is of higher-value than a for-sale market, or vice versa. For example, the Cambrian/Pioneer sub-area is in Tier 1 for-sale and Tier 2 rental.

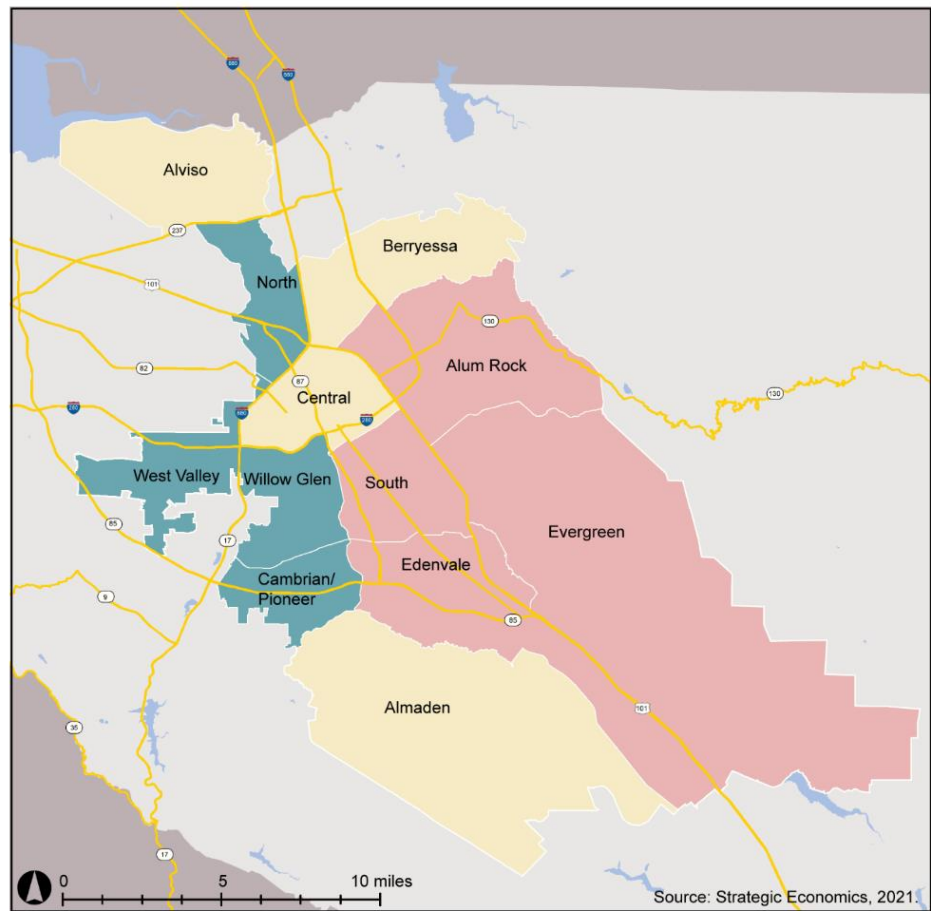
**San Jose Opportunity
Housing: Multifamily Rental
Subareas by Tier**

- Tier 1 (West Valley, Central, Willow Glen, North)
- Tier 2 (South, Berryessa, Alviso, Cambrian/Pioneer, Edenvale, Almaden)
- Tier 3 (Alum Rock, Evergreen)



San Jose Opportunity Housing: Condo/Townhome Subareas by Tier

-  Tier 1 (West Valley, North, Willow Glen, Cambrian/Pioneer)
-  Tier 2 (Central, Alviso, Berryessa, Almaden)
-  Tier 3 (Alum Rock, South, Edenvale, Evergreen)



Lot Configurations

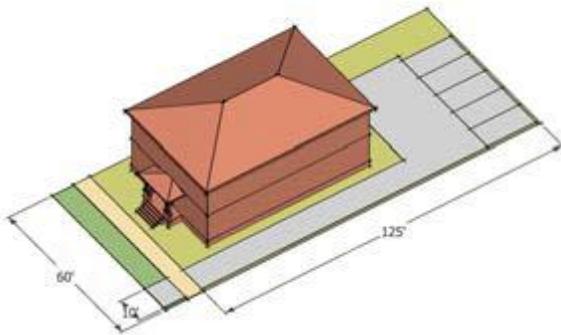
Based on the citywide review and analysis, there were 12 configurations selected that were used as prototypes and tested in each of the market tiers. One key finding of the citywide parcel analysis found that 79 percent of the over 149,700 parcels designated as Residential Neighborhood on the General Plan Land Use Diagram could accommodate a stacked fourplex. This equates to a lot size of at least 7,500 sq. ft. with dimensions at least 60 ft x 125 ft. Most configurations tested were within the bounds of the scope of work that contemplated up to four units on a lot. However, additional configurations with more than four units were tested in order to understand if a slight increase in density, still within a similar building size, would be more financially feasible. All configurations with two to four units assume one parking space per unit onsite (1:1 ratio). Below is a detailed description of the Opportunity Housing configurations that were used in the feasibility analysis:

Opportunity Housing Configuration (Two to Four Units):

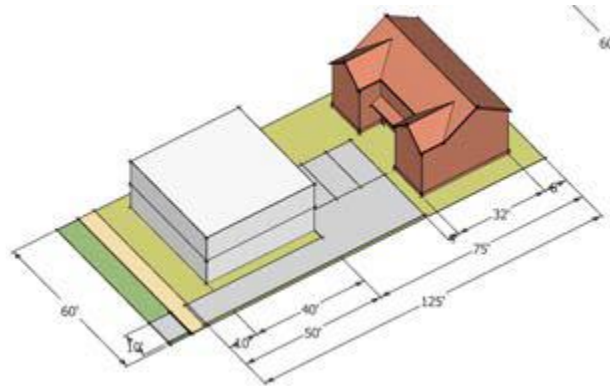
- **Stacked Fourplex (two stories):** A single building with four units. One common entrance and two-units on each floor. Tested as both a condo and a rental project.
- **Side-by-Side Large Duplex (two stories):** A traditional duplex condo with the same building footprint as the stacked fourplex.
- **Side-by-Side Duplex in Rear Yard (two stories):** A newly constructed side-by-side duplex in the rear yard of an existing single-family home. This was tested as both a condo and rental project.
- **Attached Townhomes (three stories):** Four attached townhomes on one lot and tested as condo.
- **Small Lot Single Family (three stories):** Four detached “small lot single family” units on one lot and tested as condo.

Additional Potential Configurations (six-eight units): These configurations are all three-stories but have parking ratios less than one per unit.

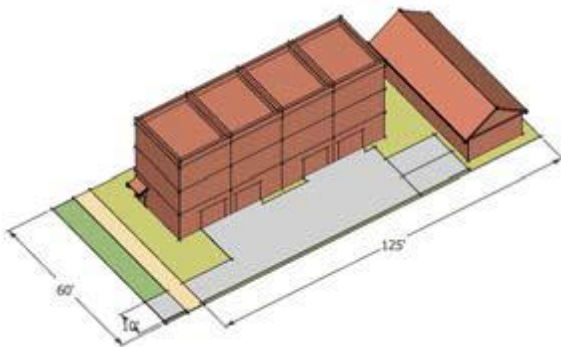
- Three-Story Sixplex: Adds a third story to the stacked fourplex, with two more units on the third story.
- Two-Story Eightplex: Same gross building square footage as the stacked fourplex, but with four units on each floor. These were tested only as rental and were the smallest unit size tested.
- Three-Story Eightplex: Same building square footage as three-story sixplex, but with three units that are smaller on first two floors. Tested as rental and condo.



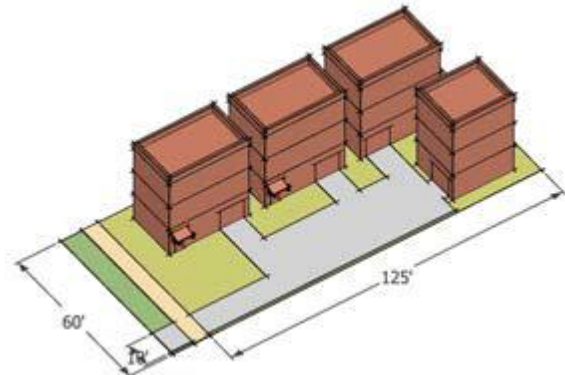
**Stacked Fourplex
Two-Story Sixplex/Eightplex**



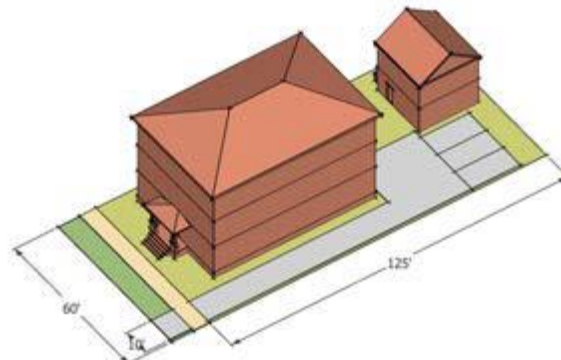
Side-By-Side Duplex in Rear Yard



Attached Townhomes



Small Lot Single Family



Three-Story Stacked Sixplex/Eightplex

Several Configurations are Financially Feasible

The 12 models were tested using a pro-forma model that calculated the project value (rental revenue or unit sales), subtracted development costs (all construction costs plus a profit), and calculated the residual value.

Therefore, to be considered feasible, the residual value would need to be greater or equal to the cost of acquiring the lot. The attached report from Strategic Economics goes into greater detail, but the results are summarized in the following table.

2-4 Unit Configurations	Tier 1	Tier 2	Tier 3
Side-by-Side Large Duplex Condo	Feasible	Feasible	Not Feasible
Side-by-Side Duplex Condo in Rear Yard	Feasible	Not Feasible	Not Feasible
Side-by-Side Duplex Rental in Rear Yard	Not Feasible	Not Feasible	Not Feasible
Stacked Fourplex Rental	Not Feasible	Not Feasible	Not Feasible
Stacked Fourplex Condo	Not Feasible	Not Feasible	Not Feasible
Small Lot Single Family	Feasible	Feasible	Not Feasible
Attached Townhomes	Feasible	Not Feasible	Not Feasible

6-8 Unit Configurations	Tier 1	Tier 2	Tier 3
Three-Story Sixplex Condo	Feasible	Not Feasible	Not Feasible
Three Story Eightplex Condo	Feasible	Not Feasible	Not Feasible
Three Story Eightplex Rental	Feasible	Not Feasible	Not Feasible
Three-Story Sixplex Rental	Not Feasible	Not Feasible	Not Feasible
Two Story Eightplex Rental	Not Feasible	Not Feasible	Not Feasible

As shown the table, Tier 1 area has four 2-4 unit for sale configurations that are feasible and three 6-8 unit configurations that are feasible, one of which is rental. Tier 2 has two for-sale configurations that are feasible. No configurations are feasible in Tier 3 under this model.

Cash Flow Analysis

The pro-forma model used to test financial feasibility for the 12 lot configurations assumes that the property would be acquired. However, the pro-forma model would not cover situations where a homeowner may own their property outright or own a significant share of equity in the property, and seek to add additional units. For this situation, the consultant conducted additional analysis using a cash flow model. The cash flow analysis is also more relevant in the context of SB 9 since owner occupancy for three years is required in certain circumstances. The cash flow model assumes a property owner would finance construction of additional units through a cash-out refinance mortgage with a conventional 30-year fixed rate loan. The *Side-by-Side Duplex Rental in Rear Yard* configuration was used for this analysis as it is a likely configuration for this situation as it leaves the existing home intact.

The analysis showed that in typical situation in the Tier 1 area, the property owner could expect to break even by year 6, with year 1 being the start of construction and mortgage payments. This assumes rental income beginning in year 2 after the completion of construction. Tier 2 properties would break even in year 7. Tier 3 is more challenging due to the property value limiting the maximum loan value. These properties would break

even in year 14 and would need additional up-front development money since the overall development cost exceeds the maximum loan. Overall, this analysis paints a similar picture as the pro-forma model where it is conceivable that some homeowners may develop additional units in their rear yard, but there is unlikely to be a large number that do so.

A cash out refinance mortgage is the most likely financial product currently available to a homeowner to finance this type of project. However, this product is less than ideal since the homeowner would likely need to show sufficient income, excluding anticipated rental income of new units, in order to qualify for the mortgage. Since this situation is relatively new, and could soon be occurring statewide, it is possible that local or regional financial institutions could look to create new products to accommodate this type of redevelopment.

Affordability of Units

The report from Strategic Economics also analyzed the affordability of the configurations tested for feasibility. The two- to four-unit configurations that are feasible would require tenant or owner household incomes above 120% of Area Median Income (AMI) for Santa Clara County. However, it should be noted that the Three-Story Sixplex Condo, the Three-Story Eightplex Rental, and the Three-Story Eightplex Condo were determined to be feasible in the Tier I market. These configurations would be affordable to Moderate-income renters or homebuyers, who earn between 80 and 120% AMI.³ The configurations highlighted in green below are those that were determined to be feasible.

Tier 1 Affordability Summary

Configuration	Income Needed to Rent or Purchase Unit	Affordable to Households at:
Two to Four Units		
Stacked Fourplex Rental (2-BR)	\$153,320	125% AMI
Stacked Fourplex Condo (2-BR)	\$183,198	135% AMI
Side-by-Side Large Duplex Condo (4-BR)	\$339,550	195% AMI
Side-by-Side Duplex Rental in Rear Yard (3-BR)	\$172,000	105-115% AMI
Side-by-Side Duplex Condo in Rear Yard (3-BR)	\$210,224	130-140% AMI
Small Lot Single Family (3-BR)	\$237,702	145-155% AMI
Attached Townhome (3-BR)	\$237,291	145-155% AMI
Six to Eight Units		
Three-Story Sixplex Rental (2-BR)	\$153,320	125% AMI
Three-Story Sixplex Condo (2-BR)	\$183,198	135% AMI
Two-Story Eightplex Rental (1-BR)	\$94,840	80-90% AMI
Three-Story Eightplex Rental		
1-BR	\$115,840	95-110% AMI
2-BR	\$146,120	105% AMI
Three-Story Eightplex Condo		
1-BR	\$128,809	105-120% AMI
2-BR	\$173,869	130% AMI

Tier 2 affordability is included in the full report from Strategic Economics as Figure 26. There are two feasible configurations, the Side-by-Side Duplex Condo and the Small Lot Single Family. Both are above the moderate-

³ City of San José Rent and Income Limit Tables, Effective Date April 26, 2021, <https://www.sanjoseca.gov/home/showpublisheddocument/72973/637568410954100000>

income range. The Side-by-Side Duplex Condo were affordable to households at 170% AMI and the Small Lot Single Family was affordable to households between 130-140% AMI. Tier 3 was not analyzed since there were no configurations that were found to be feasible. Overall, a slight increase in density by going to six to eight units improved affordability.

Senate Bill 9 Comparison with Opportunity Housing

As noted previously, SB 9 would allow most Opportunity Housing configurations with 2-4 units studied under the feasibility analysis. Below is a chart outlining which configurations would be allowed under SB 9 and its feasibility.

Configuration	SB 9	Feasibility	Notes
Stacked Fourplex Rental & Condo	Not allowed	Not Feasible	
Side-by-Side Duplex Condo	Allowed	Tier 1 & Tier 2	
Side-by-Side Duplex Condo in Rear Yard	Allowed with lot split	Tier 1	
Side-by-Side Duplex Rental in Rear Yard	Allowed with lot split	Not Feasible*	Owner occupancy is required.
Small Lot Single Family	Allowed with lot split	Tier 1 & Tier 2	Owner occupancy is required.
Attached Townhomes	Allowed with lot split; slight variation would be needed.	Tier 1	Lot split and owner occupancy is required. Not all units could be attached. Small Lot Single Family more likely.

**This configuration was also assessed under a cash flow analysis to examine this model from a homeowner's perspective discussed in the previous separate section.*

Senate Bill 10

As noted in the background, SB 10 provides an optional route for cities to allow up to 10 units on any parcel within a transit-rich area or urban infill site. SB 10 would exempt the legislative acts of the City from CEQA, i.e., General Plan and zoning amendments. Individual development applications are still subject to CEQA unless the City were to provide for a ministerial approval process. However, it is staff's current understanding that SB 10 requires a city to allow 10 units to be constructed on every property zoned under SB 10, meaning the City could not use SB 10 to streamline zoning that would limit properties to Council's direction Opportunity Housing of up to four units, or the additional configurations tested in the feasibility analysis, such as six to eight units meeting the transit-rich or urban infill site definitions.

Reason for Recommendation

As noted previously, the Opportunity Housing configurations that have some level of feasibility shown in the feasibility analysis will be allowed throughout the City under SB 9. Those configurations not allowed by SB 9 are either not currently financially feasible, e.g., stacked fourplex, or contain more units than was contemplated under Opportunity Housing as defined in the City Council scope of work. Therefore, staff believes the best course of action at the present is to focus on implementation of SB 9, which takes effect on January 1, 2022, rather than pursuing the City's Opportunity Housing effort as proposed within the context of the General Plan Four-Year Review. In the future, the City could also consider allowing additional configurations beyond what is allowed under SB 9 such as sixplexes and eightplexes. However, more work,

including significant community outreach, would need to be done to understand where and how this type of housing should be facilitated in the city.

Citywide Design Standards

SB 9 requires a jurisdiction to allow at least two units of 800 square feet each on a single parcel. It also contains the following mandatory design standards:

- Cannot require more than four-foot side and rear setbacks for SB 9 developments.
- Cannot require more than one parking space per unit., except no parking can be required for projects within a half-mile walking distance of high-quality transit or major transit stops, as defined by state law, or if there is a car share vehicle located within one block.
- Must allow construction of attached units; however, attached units must be designed to meet all requirements for selling each unit individually.
- No setback can be required for existing structures.
- The City cannot require the correction of non-conforming zoning conditions on a property as a condition of approval of a SB 9 project or deny a SB 9 project due to existing non-conforming conditions.

The City may adopt additional objective design standards. This could include standards to assure new units fit better within the existing neighborhood, such as requiring front doors to be street facing and/or limiting the percentage of a front façade that is taken up by garage doors. Staff is recommending development of these design standards that would then be brought to the Planning Commission and the City Council for consideration. Staff anticipates that this effort would take a year to complete and would include robust community outreach.

R-2 Zoning District and Historic Properties

SB 9 applies only to R-1 zoned properties, but due to historical development and zoning patterns, many of San Jose's single-family residential properties are zoned R-2 and would not qualify for SB 9. R-2 allows the construction of duplexes only on a small percentage of properties if consistent with the General Plan designation and following CEQA compliance and a publicly noticed discretionary hearing process. Given the similarities of R-2 and R-1 zone properties, staff is recommending exploring allowing housing development types consistent with SB 9 on R-2 zoned properties. If no action is taken regarding the R-2 zoning district, it would be easier to develop a duplex on a property zoned R-1.

SB 9 does not apply to sites within a historic district or on a site that is designated historic. Under the City's Opportunity Housing effort, staff was considering allowing limited SB 9 type projects on historic properties where the project will not have a negative impact on the historic resource. Staff is recommending exploring allowing SB 9 type projects on historic properties, that could include adaptive re-use of existing historic structures. For example, the conversion of older larger historic homes into multiple units has occurred previously.

Prioritization of Urban Village Planning

The Task Force approved an additional recommendation to staff to prioritize Urban Village Implementation. This recommendation is consistent with Major Strategy #5 of the Envision San José 2040 General Plan:

Promote the development of Urban Villages to provide active, walkable, bicycle-friendly, transit-oriented, mixed-use urban settings for new housing and job growth attractive to an innovative workforce and consistent with the Plan's environmental goals.

Urban Village implementation has progressed through the continued completion of Urban Village plans. To date, 13 Urban Village Plans are approved, one is in process (North 1st Street), and two have grant funding and

will be initiated in the next year (Southwest Expressway/Race Street and Eastside Alum Rock). Additionally, staff will be working with the Valley Transportation Authority per Council direction to update the Five Wounds Plans (covering Five Wounds, Little Portugal, 24th and William, and Roosevelt Park urban village plans) to allow mixed-use development to align with the opening of the 28th Street/Alum Rock BART station. Staff is also anticipating initiating work on the Capitol Caltrain Station Area plan in Spring 2022, which is an item resulting from the Monterey Corridor Working Group and supported by Task Force recommendations from the General Plan 4-Year Review.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Not a Project, File No. PP17-007, Preliminary direction to staff and eventual action requires approval from a decision-making body.

PUBLIC OUTREACH

Opportunity Housing was discussed at the following General Plan Four-Year Review Task Force meetings: December 18, 2019; February 27, 2020; July 30, 2020; and August 20, 2020. Approximately 444 members of the public attended the meetings on Opportunity Housing and provided comments and questions for staff and the Task Force. In addition, staff conducted outreach with the following neighborhood groups across the City on the topic of Opportunity Housing:

- 2/8/21 - Almaden Valley Community Association
- 2/29/21 – District 8 Community Round Table
- 3/8/21 – District 2 Leadership Group
- 3/29/21 – Shasta Hanchett Neighborhood Association Board
- 4/8/21 – District 9 Leadership Group
- 4/12/21 – SJ United District 2, 9, 10
- 4/15/21 – SJ United District 5, 7, 8
- 4/19/21 – Young Democrats of Silicon Valley
- 4/22/21 – SJ United Districts 1, 3, 4, 6
- 4/23/21 –SV@Home Housing Action Coalition
- 5/17/21 – District 1 Leadership Group

In the recommendations to the Task Force on Opportunity Housing, staff had contemplated a robust community engagement plan in the development of Opportunity Housing development standards if the City Council were to direct staff to moved forward with Opportunity Housing. Staff will conduct additional community engagement as part of the effort to implement SB 9.

Project Manager: Jerad Ferguson

Approved by: /s/ Michael Brilliot, Deputy Director for Christopher Burton, Planning Director

ATTACHMENTS
Exhibit A: Feasibility Analysis Report from Strategic Economics
Exhibit B: Information Memorandum on SB 9 and SB 10