



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: See Below

DATE: November 4, 2024

COUNCIL DISTRICT: Citywide

SUBJECT: PP24-007 - Phase II Emergency Shelter Updates – An Ordinance Amending Various Sections of Title 20 of the San José Municipal Code (Zoning Ordinance or Zoning Code) Related to Emergency Shelters

RECOMMENDATION

On October 23, 2024, the Planning Commission voted 7-1-1 (Oliverio opposed, Bickford absent) to recommend that the City Council approve an ordinance amending various sections of Title 20 of the San José Municipal Code to amend the definition of emergency residential shelter, an amendment to Chapter 20.80 to amend the specific use regulations for emergency residential shelter, and amendments to the Use Regulations tables in Chapter 20.40 'Commercial Zoning Districts and Public/Quasi-Public Zoning District,' Chapter 20.50, 'Industrial Zoning District,' Chapter 20.55 'Urban Village and Mixed Use Zoning Districts,' and Chapter 20.70, 'Downtown Zoning Districts' to allow emergency residential shelters by right within the Airport Influence Area.

SUMMARY AND OUTCOME

Approval of the proposed San José Municipal Code amendments will amend various chapters within Title 20, Zoning Code, to allow a ministerial approval process for emergency residential shelters within the Downtown Zoning District and applicable sites within the Airport Influence Area and codify state objective development standards for emergency residential shelters.

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BACKGROUND

The proposed Zoning Code update would incorporate state objective development standards as well as a Housing First and low barrier to entry approach to emergency residential shelter development. This ordinance amends the definition of emergency residential shelter to include non-congregate forms of shelter, codifies state objective development standards within the specific use regulations for emergency residential shelters, and permits the ministerial approval of emergency residential shelters within the Downtown Zoning District and within the Airport Influence Area in zoning districts that already allow for the use.

ANALYSIS

A complete analysis of the Zoning Ordinance amendments is contained in the Planning Commission staff report dated October 23, 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 November 19, 2024 City Council meeting.

Staff conducted various outreach meetings with interested stakeholders throughout summer and fall of 2024 and held a community meeting on September 5, 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 Planning, Building, and Code Enforcement Department website. Staff has been available to respond to questions from the public.

COMMISSION RECOMMENDATION AND INPUT

On October 23, 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 Young inquired how recent legislation related to emergency residential shelters might affect this work. Staff clarified that staff are tracking new legislation signed by the governor and will continue to propose zoning code updates as needed to comply with state law. Commissioner Young also requested a description of the Airport Influence Area. Staff explained that the Airport Influence Area consists of sites deemed within the purview of the Airport Land Use Commission due to noise, safety, and height concerns. Staff also clarified that geographically, sites within the Airport Influence Area fall within the buffer zone of the perimeter of the airports, specifically San José Mineta International Airport and Reid-Hillview Airport.

Commissioner Young expressed concerns about allowing emergency residential shelters by right within the Airport Influence Area due to some of those sites being located within Downtown and residents not being able to participate in a public hearing. Staff clarified that within the Downtown Zoning District, Assembly Bill 101 requires Low Barrier Navigation Centers be permitted by right, and through Assembly Bill 2339, Low Barrier Navigation Center is a type of emergency residential shelter. Therefore, types of emergency residential shelters are already permitted by right in Downtown and allowing the emergency residential shelter use itself would provide consistency and clarity around the state's definitions.

Commissioner Oliverio expressed concerns that the City is exceeding what is required by state law by increasing the number of beds permitted by right from 50 to 150. Staff clarified that in the initial phase of work, staff proposed the number of beds permitted by right to be 100, which was the minimum needed to meet the City's shelter bed deficit. Staff further clarified that City Council increased the number of beds permitted by right from 100 to 150.

Commissioner Cantrell inquired whether staff reached out to community members. Staff responded that a virtual community meeting was held on September 5, 2024, where 14 community members attended. Commissioner Cantrell also inquired why staff did not remove congregate forms of shelter from the definition of emergency residential shelter.

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Staff clarified that in discussions with shelter operators, there were conversations around the shift toward non-congregate shelters, however non-congregate shelters are not always financially feasible and can sometimes require much larger sites that are not always available. In these discussions, shelter operators emphasized that while congregate shelters might not always provide the best environment for those experiencing homelessness, there is still a need to provide as many beds as possible to assist as many individuals as possible.

Commissioner Cantrell inquired how many congregate shelters are currently operating within the city and how many have closed. Staff responded that the City does not keep a record of shelters that are currently open but two have come in for permit adjustments for expansions. Commissioner Cantrell further inquired whether the City would be out of compliance with state law if the City did not allow for new congregate shelters. Staff clarified that Assembly Bill 2339 limits the objective development standards that can apply to emergency residential shelters and shelter type is not included within that list of standards. Commissioner Cantrell requested clarification from the City Attorney, who confirmed that the proposed zoning code updates, as is, are compliant with state law.

Commissioner Tordillos commented that he was in support of removing the 60-day maximum length of stay and aligning with the state's 180-day maximum length of stay. Commissioner Tordillos inquired if the City had data on how many sheltered individuals take longer than 180 days to be placed into permanent housing. Staff responded that the Point-In-Time Count and the data collection points are guided by HUD, and while the Point In Time Count identifies the number of individuals currently experiencing homelessness and the duration of their current episode of homelessness, it does not track duration of time within a shelter before entering permanent housing since the Point In Time Count accounts for both sheltered and unsheltered individuals experiencing homelessness.

Commissioner Tordillos also inquired whether the City had the authority to extend stays past the state's 180-day maximum length of stay. Staff responded that in the past, the City has by allowing a stay of up to 18 months through a Conditional Use Permit if the individual is enrolled in a drug or alcohol treatment or recovery program. Staff clarified this is one of the objective standards being removed since the requirement of enrollment in such a program is not Housing First or low barrier to housing. Commissioner Tordillos further inquired whether the removal of the drug and alcohol treatment or recovery program was done to align with guidelines from the state or follow previous City Council guidance, or if it was done to align with best practices from experts in the field. Staff responded that it was done to align with best practices from experts in the field, specifically feedback and recommendations from shelter providers currently operating within the city.

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Commissioner Young made a motion to recommend approval of the staff recommendation. Commissioner Lardinois seconded this motion. The Planning Commission voted 7-1-1, with Commissioner Oliverio voting no and Commissioner Bickford absent, to recommend the City Council approve this item per staff's recommendation.

CEQA

Not a Project, File No. PP17-008, General Procedure and 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 Jerad.Ferguson@sanjoseca.gov or (669) 223-1160.

ATTACHMENT

Planning Commission Staff Report



Memorandum

TO: PLANNING COMMISSION

FROM: Christopher Burton

SUBJECT: PP24-007

DATE:

COUNCIL DISTRICT: Citywide

Project	An amendment to Chapter 20.200 of the Zoning Ordinance to amend the definition of emergency residential shelter, an amendment to Chapter 20.80 to amend the specific use regulations for emergency residential shelter, and amendments to the Use Regulations tables in Chapter 20.40 'Commercial Zoning Districts and Public/Quasi-Public Zoning District,' Chapter 20.50, 'Industrial Zoning District,' Chapter 20.55 'Urban Village and Mixed Use Zoning Districts,' and Chapter 20.70, 'Downtown Zoning Districts' to allow emergency residential shelters by right within the Airport Influence Area.
Project Description	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 specific use regulations for emergency residential shelter in Chapter 20.80, and 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 20.55, 'Urban Village and Mixed Use Zoning Districts,' and Table 20-140 of Section 20.70.100 of Chapter 20.70, 'Downtown Zoning Regulations.'
CEQA Clearance	Not a Project, File No. PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment.
Project Planner	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 specific use regulations for emergency residential shelter, and amend the allowed use of emergency residential shelters by right within the Airport Influence Area in the Commercial Pedestrian Zoning District, Commercial Neighborhood Zoning District, Commercial General Zoning District, Public/Quasi Public Zoning District, Urban Village and Mixed Use Zoning Districts, Transit Residential Zoning District, Urban Residential Zoning District, and Downtown Zoning District.

PROJECT BACKGROUND

The proposed Zoning Code update would incorporate Zoning Code modifications to align with best practices for emergency residential shelters and amend the permit requirements for emergency residential shelters within the Airport Influence Area (AIA) in zoning districts that already permit them by right.

PP24-004: Emergency Residential Shelters

Housing Element (GOV § 65583) law, as amended, requires the identification of one or more zoning districts that allow for residential use, including mixed use, where emergency residential shelters are allowed without a discretionary permit. To comply with Housing Element law by the statutory deadline, City Council approved PP24-004 on June 11, 2024 to:

- Reference GOV § 65583 in the City’s definition of emergency residential shelters to align with the state’s definition and requirements, as amended
- Allow emergency residential shelters with 150 beds or fewer by right in zoning districts that already allow for the use, through use permit or by right
- Include emergency residential shelters within the ministerial approval process

The zoning code updates approved in June apply only to sites outside the AIA and within the following zoning districts: Commercial Pedestrian, Commercial Neighborhood, Commercial General, Public/Quasi-Public, Urban Village, Mixed Use Neighborhood, Mixed Use Commercial, Urban Residential, and Transit Residential. Additional details can be found in the [staff memorandum](#) presented to Planning Commission and [ordinance](#) approved by City Council. As part of that initial work, staff identified additional zoning code updates that could be made to further facilitate shelters, however, decided to continue exploring those updates subsequent to compliance with state law by the statutory deadline. Staff is now proposing those additional zoning code updates, which include:

- Further updating the City’s definition of emergency residential shelters to include non-congregate forms of shelter
- Allowing emergency residential shelters with 150 beds or fewer by right in applicable sites within the AIA
- Adding the Downtown Zoning District to the list of identified zoning districts where emergency residential shelters with 150 beds or fewer are allowed by right
- Removing objective standards within the specific use regulations for emergency residential shelters that are not considered “Housing First” or low barrier to entry

The recommended changes were referred to the Airport Land Use Commission and presented at the September 19, 2024 hearing. The referral received a determination of consistency with the policies of safety, height, and noise contained within the San José International Airport (SJC) Airport Land Use Compatibility Plan and the Reid-Hillview Airport (RHV) Comprehensive Land Use Plan.

ANALYSIS

Emergency Residential Shelter Definition

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 experiencing homelessness. The proposed expansion of the definition would also clarify that, in addition to a singular building, a structure or a series of buildings or structures can be considered an emergency residential shelter. The City of San José currently operates six emergency interim housing communities, developed through the Shelter Crisis Act (AB 2176), that operate as non-congregate shelters. Non-congregate

shelters provide private units or rooms as temporary shelter, such as tiny homes, which are considered structures, not buildings.

To remain inclusive of these types of projects, staff coordinated with the Homeless Response Division of the Housing Department to expand the definition through the addition of other physical forms emergency residential shelters can take, especially those that have become popularized in recent years. The expanded definition of emergency residential shelter would give shelter providers with the flexibility to operate private emergency residential shelters as non-congregate shelters if their projects do not qualify through the Shelter Crisis Act.

Objective and Development 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 proposed amendments to this chapter would adjust existing standards in [Section 20.80.500](#) of the City of San José Municipal code to be consistent with state law, specifically:

- The maximum number of beds or persons permitted to be served nightly by the facility
- The length of stay
- At least one security guard during hours of operation
- Compliance with the City's Lighting Policy

[Section 20.80.500](#) lays out the specific use regulations for emergency residential shelters, currently 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 how 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. On the average length of stay exceeding 60 days, staff believes the current maximum length of stay results in a barrier for shelter providers.

Staff proposes removing the current maximum length of stay of 60 days to align with the California Health and Safety Code Section 50801 maximum length of stay of 180 days to provide individuals with the flexibility to continue seeking emergency residential shelter assistance if they are unable to find housing within 60 days. Additionally, staff proposes removing the requirement for persons to be enrolled in drug or alcohol recovery programs for an extended stay through a Conditional Use Permit, a practice that is not considered a "Housing First" or low barrier to entry approach to mitigating homelessness.

AB 2339 limits the objective standards that cities can review for, outlining the seven standards that emergency residential shelters can be subject to. In order for staff to request compliance with any of these objective standards, they must be codified within the zoning code. Security during hours of operation and lighting are two of the seven objective standards outlined in AB 2339. Staff proposes the provision of at least one security guard during hours of operation, which is consistent with AB 2339 and operations plans of previously submitted permits for emergency residential shelters. Staff also proposes

explicitly stating that all lighting or illumination must confirm with any lighting policy adopted by City Council. While Commercial, PQP, Urban Village, and Mixed Use Zoning Districts have specific lighting requirements in their respective sections, Downtown does not. Including standards for lighting in the specific use regulations for emergency residential shelters would codify lighting requirements consistent with policies adopted by City Council.

Allowed Uses and Permit Requirements

Emergency residential shelters are allowed by right and through a use permit in the following zoning districts: Commercial Pedestrian, Commercial Neighborhood, Commercial General, Public/Quasi Public, Urban Village and Mixed Use, Urban Residential, Transit Residential, and Downtown. Currently, aside from Downtown:

- Emergency residential shelters within the AIA require a use permit
- Emergency residential shelters outside the AIA with more than 150 beds requires a use permit
- Emergency residential shelters outside the AIA with 150 beds or fewer are permitted by right

Staff is proposing updates to the use regulations tables for each of these zoning districts to apply the existing emergency residential shelter criteria outside the AIA to sites within the AIA for consistency.

In Downtown, emergency residential shelters require a Conditional Use Permit. However, Low-Barrier Navigation Centers, a specific type of interim intervention, defined in AB 2339 as a type of emergency residential shelter, are allowed by right. Staff is proposing updates to the use regulations table in this zoning district to be consistent with the other zoning districts that allow for emergency residential shelters. Staff excluded Downtown from the first phase of updates approved by City Council in June due to maintenance updates in this section of the zoning code, which would have resulted in an overlap and potential override of updates.

By cleaning up the use regulations tables for all zoning districts that currently allow for emergency residential shelters, each zoning district would have the following enumerated uses for emergency residential shelters:

- Emergency residential shelters with more than 150 beds requires a Conditional Use Permit
- Emergency residential shelters with 150 beds or fewer are permitted by right

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

As part of PP24-004, outreach meetings were held with shelter service providers and operators to discuss and gather feedback on the proposed zoning code updates related to emergency residential shelters. Staff met with HomeFirst, LifeMoves, and Destination: Home. Staff learned that there is a shift toward non-congregate shelters, which are often more trauma-informed and safe than congregate shelters. 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.

Staff also 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.

Staff conducted additional outreach meetings with HomeFirst, LifeMoves, and Destination: Home to discuss and gather feedback on the proposed zoning code updates related to emergency residential shelters as part of PP24-007. Staff followed up via email and phone calls in July and August 2024. Shelter operators did not provide any additional feedback or comments.

With the emergency residential shelter use now including interim intervention, per state law, staff conducted outreach with stakeholders and partners involved in medical recuperative care and short-term post-hospitalization outreach, two types of interim interventions. Staff met with Anthem to discuss the proposed zoning code updates. Staff also met with Santa Clara Family Health Plan (SCFHP).

A community meeting was held on September 5, 2024. 14 members of the public attended. Several attendees asked if emergency residential shelters include safe sleeping sites, safe parking sites, and/or Emergency Interim Housing Communities. Staff informed the attendees that the uses mentioned do not fall under the emergency residential shelter use, and that emergency residential shelter is defined within GOV § 65583, which states that the use includes other interim intervention, including, but not limited to, navigation centers, bridge housing, and respite or recuperative care. One attendee was curious about the noticing radius for when a new shelter development is proposed. Staff informed the attendee that the noticing radius can vary depending on the size of the project but can include up to a 1,000-foot radius. Two attendees questioned what constitutes as an emergency. Staff clarified that emergency residential shelters is the title of the use itself, not that there is necessarily an emergency or that these shelters are only in operation when an emergency is declared. One attendee expressed concerns about the lack of services at some shelters, hours of operations, and the absence of a citizens advisory committee. Staff clarified that these proposed zoning code updates are intended to streamline the permitting process for emergency residential shelters and is not site-specific or a project proposal. Operations can vary from shelter to shelter and the City is also limited to the objective standards outlined in AB 2339 in regard to

what the City can review or request for shelters.

Two attendees expressed confusion between zoning districts and General Plan land use designation. Staff explained that the State now requires cities to update all zoning districts to confirm with the General Plan land use designations, and both can be found on the City's Public GIS Viewer. Staff offered to follow up with those two attendees via email to help them identify the zoning district and General Plan land use designation for their properties. One attendee asked staff to clarify what private operators are and how many project applications have been submitted. Staff responded that private operators are those that operate shelters without partnership from the City, County, or State. Staff also informed the attendee that between 2010 and 2024, only one application came in from an existing operator, requesting to increase the number of beds at the facility. One attendee inquired whether there has been research done and presented to the mayor and City Council to inform these proposed zoning code updates. Staff clarified that these proposed zoning code updates were initiated by requirements to comply with state law and informed by shelter operators, which will be presented to Planning Commission and City Council.

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/ Jerad Ferguson, Principal Planner for Christopher Burton, Planning Director

Please click on the title of each exhibit to view the document:

EXHIBITS:
Exhibit A: PP24-007 Draft Ordinance