Chapter 5
Constraints to Housing

This chapter summarizes known governmental and nongovernmental constraints to housing in Fremont and serves as a basis to form appropriate policy responses.

Purpose

Per California Government Code Section 65583(a)(5-6), a Housing Element should identify nongovernmental and governmental factors (constraints) that inhibit the development, maintenance, or improvement of housing. A thorough understanding of the constraints to housing development helps to inform appropriate policy responses to mitigate constraints and make it easier and more affordable to develop housing. A variety of factors can inhibit or constrain housing development, including environmental and market conditions, and governmental regulations.

Overview of Major Findings

Key findings from this analysis of governmental and nongovernmental constraints are summarized below. These findings were informed by a review of the City's General Plan, development regulations, applicable laws, and community and stakeholder input. Findings from this constraints analysis serves as the foundation for policy responses to address these constraints.

- **Constraints Finding #1. High land costs impact the feasibility of development.** Fremont is located in the San Francisco Bay Area, which is consistently identified as one of the most expensive housing markets in the country. The high cost of acquiring land and construction will continue to be one of the most significant constraints towards the provision of housing, especially affordable housing.

- **Constraints Finding #2. Insufficient government funding exists to subsidize all of the region's affordable housing needs.** Affordable housing developments are not typically financially feasible under current market conditions without receiving subsidies from Federal, State, County or local government sources, and there is insufficient funding available for governments to subsidize all of the affordable housing needs in California. Additionally, affordable housing developers typically rely on multiple sources of funds and tax credits in order to produce an affordable housing development, which adds to the complexity and cost of developing affordable housing.

- **Constraints Finding #3. The community is concerned about housing growth**. In a community survey, 65% of Fremont residents felt that the rate of growth and development in Fremont was "too fast". A negative perception of growth can fuel community opposition to specific development proposals, which can be a constraint to housing. Although a majority of residents felt that the rate of growth was "too fast", a vast majority of residents also responded that the cost of housing was an extremely serious/very serious issue (84%), and traffic congestion was an extremely serious/very serious issue (86%).

- **Constraints Finding #4. Reducing development impact fees by 50% for deed - restricted affordable units and waiving development impact fees for Accessory Dwelling Units (ADUs) facilitates the production of these critical housing types**. Development impact fees are a constraint on affordable housing. A 50% reduction on traffic, parkland acquisition and park facilities development impact fees for deed-restricted affordable housing and waiver of development impact fees for ADUs encourages the development of these critical housing types.

- **Constraints Finding #5. Design standards can be complex. Objective design standards are needed as a basis for reviewing housing proposals.** Recent state legislation requires jurisdictions to have "objective" standards in place to serve as the basis for reviewing housing proposals. Fremont has various adopted design guidelines, many of which were created prior to the emphasis on objective standards. Enhancing these standards will be important to appropriately regulate housing proposals in the future.

- **Constraints Finding #6. Rapidly changing state law adds confusion to the development process. Zoning amendments and procedural changes are needed to achieve consistency with expanding state housing requirements**. Facilitating the production of housing continues to be an area of emphasis in the state legislature. Fremont's zoning regulations should be updated to capture the most recent changes in state law regarding Density Bonus, SB 9 (urban lot splits and two-unit developments in single-family zones), missing-middle housing, and supportive and transitional housing. Record-keeping procedures should be updated to capture new requirements including No Net Loss.

- **Constraints Finding #7. Development involving historic resources is complex.** The City of Fremont is an area rich with historical resources. Fremont's Historic Resources Ordinance and Historic Overlay District (HOD) Ordinance require Historical Architectural Review for housing projects that affect historic resources/potential historic resources or are located within HODs. Fremont has potential historic resources that have yet to be identified, which can be a constraint to housing. Reviewing a housing proposal involving historic resources against objective standards can also be challenging.

- **Constraints Finding #8. Reach codes in service of sustainability goals increase construction costs. Reach codes should balance sustainability goals with housing production.** With each three-year Building Code cycle, Fremont can choose to incorporate additional standards for sustainability that exceed the requirements of the standard Building Code. Adoption of these code requirements should consider the impact on the feasibility of housing.

- **Constraints Finding #9. Minimum and maximum parking requirements affect the feasibility of housing developments.** Minimum and maximum parking requirements, particularly for affordable housing developments and developments near transit, should be analyzed and updated as needed to encourage the efficient use of land.

- **Constraints Finding #10. Fremont lacks short term rental regulations.** Fremont does not currently have an ordinance in place specifically for the regulation of short-term rental units (rented for less than 30-days), although the Zoning Ordinance specifically disallows them in ADUs. Based on current estimates, there are more than 300 short term rental units active in Fremont. This number may potentially be higher based on the unit vacancy data in Chapter 4, Housing Needs Assessment. Short term rental units may have an incremental impact on the availability of long-term rental housing in Fremont.

- **Constraints Finding #11. Frequently changing ADU regulations/processes adds confusion to the development process. ADU regulations and processes can be enhanced to facilitate production.** During outreach efforts, local ADU developers communicated that increasing predictability in the review process and simplifying standards would help reduce constraints to ADU development. Increasing predictability would include communicating all requirements and expectations up front and having reliable, consistent sources of information.

- **Constraints Finding #12. Development of affordable housing on the Fremont BART Station would require proactive steps.** BART's Transit-Oriented Development (TOD) Workplan states that BART will prioritize their limited resources towards developing housing on sites with clear local support. Although the City Center Community Plan and zoning allows for high density residential development on the Fremont BART site consistent with BART's TOD goals, proactive steps are needed to signal that the City has an interest in encouraging development of affordable housing on BART land, and address constraints.

Nongovernmental Constraints

Nongovernmental constraints are barriers to building housing where the City lacks direct control, including land costs, availability of labor, availability of financing, etc. Although the City lacks direct control, appropriate policy responses may serve to minimize or remove these constraints.

Land Costs

The high cost of acquiring land is a major constraint towards the provision of housing, especially affordable housing. Fremont is located in the San Francisco Bay Area, which is consistently identified as one of the most expensive housing markets in the country. Land values vary considerably from site-to-site and are affected by numerous factors (what can potentially be developed on the lot, and existing uses and improvements, etc.).

In support of the City's Affordable Housing Ordinance update, a financial feasibility analysis was prepared by Keyser Marston Associates (KMA) in 2020, which included land transaction data since 2016 for sample residential development projects. Data was collected from CoStar, a third-party vendor of market data. For land sales targeted for high density development, land was sold for an average price of $90 per land square foot (approximately $3.9 million/acre). For land targeted for medium density development, the average cost was $66 per land square foot (approximately $2.9 million/acre). For land targeted for low density development, the average cost was $44 per land square foot (approximately $1.9 million/acre).

Housing developers will typically prepare a pro forma analysis to determine whether to pursue a development project. The pro forma includes a "residual land value analysis," meaning the pro forma solves for what the project can afford to pay for a development site and then compares this to land costs in the current market. The analysis then evaluates feasibility based on whether the economics of the project are strong enough to afford a site under current market conditions. When land costs are high, as it is in the Bay Area, as documented above, it constrains the number of sites that are available for new housing.

Direct Development Costs

The direct costs of development include all contractor labor and material costs to construct the project including general requirements, contractor fees, and contingencies. The 2020 KMA analysis estimated direct construction costs at between $349,000 and $782,000/unit depending upon the unit type and size. Key variables with respect to direct costs include the size of the unit, the type of parking, and overall density. In general, higher density developments are more costly on a per square foot basis than lower density developments. A 2020 Terner Center study, "The Costs of Affordable Housing Production: Insights from California's 9% Low-Income Housing Tax Credit Program" the cost of developing a unit of affordable housing rose by 30% between 2016 and 2019. A 2020 Terner Center study, "The Hard Costs of Construction: Recent Trends in Labor and Materials Costs for Apartment Buildings in California" noted that hard costs for housing projects in California rose by 25% between 2008 and 2018, reflecting rising land, materials, and labor costs. High development costs constrain the feasibility of housing developments.

Indirect Development Costs

Indirect costs of development include architecture and engineering costs, municipal fees and permits costs, taxes, insurance, overhead, debt financing costs, etc. The 2020 KMA analysis estimated indirect

costs to range from roughly $130,000 to $380,000/unit. In general, higher density developments tend to have higher indirect costs on a per square foot basis because they have more complex design and engineering issues than single family homes and because they take longer to build. Fremont's strategically urban land use strategy in the General Plan encourages higher density development near transit, which means that indirect development costs will be on the higher range of the range during the planning period.

Availability of Financing

The availability of financing and interest rates greatly affect the cost and supply of housing. Interest rates substantially impact development costs, and fluctuations in rates can drastically change a developer's pro forma. Under current market conditions, interest rates are low relative to historic conditions. If interest rates increase during the planning period, housing development will be constrained as financing for housing development becomes more difficult to obtain, and development costs increase.

Community Concerns

In 2018, a community survey for Fremont residents was conducted, which documented that 65% of residents felt that the rate of growth and development was "too fast". Approximately 59% of respondents indicated that population growth was an extremely serious/very serious issue. This negative perception of housing can fuel community opposition to specific development proposals, which can be a constraint to housing. In community outreach in support of the Housing Element, many residents expressed support for affordable housing development, but not market rate development, in particular townhouse-style developments.

Although a majority of residents felt that the rate of growth was "too fast", a vast majority of residents also responded that the cost of housing was an extremely serious/very serious issue (84%), and traffic congestion was an extremely serious/very serious issue (86%). This suggests that the public generally does not perceive new housing as having a positive effect on housing affordability or traffic congestion issues.

Requests for Housing Developments at Reduced Densities

State law requires a Housing Element to include an analysis of requests to develop housing at densities below those anticipated. During the previous Housing Element cycle, most development projects on the City's sites inventory were at densities at or above the conservative assumption in the Housing Element. Based on an analysis of development that occurred on Housing Element inventory sites during the 2015-2023 planning period (as discussed in Chapter 8 – Sites Inventory and Analysis), sites were developed at densities higher than the conservative assumptions in the Housing Element.

Fremont's residential zoning districts all have a minimum residential density, and estimates in the 2015-2023 Housing Element were conservative, so there was little risk of developing at a lower density than anticipated.

The City's commercial districts generally permit development to occur without a residential use. However, if residential uses are proposed in a commercial district in a TOD Overlay District or within the City Center District, they would be subject to a minimum residential density. Based on an analysis of development that occurred on Housing Element inventory sites during the 2015-2023 planning period, only one parcel in a commercial district was redeveloped without incorporating a residential component. This indicates that the probability of development of a site below anticipated densities in commercial

districts is low. No net loss requirements under State law, requires cities to track development on Housing Element sites to ensure that adequate zoning capacity for residential development is maintained though out the planning period.

Length of Time between Project Approval and Applications for Building Permits

State law requires an analysis of the length of time between receiving approval for housing development and submittal of an application for building permit. The time between the approval of a housing development application and submittal of an application for building permits varies significantly based on individual circumstances. This period is typically three to nine months.

The length of time often correlates with the complexity of the project. More complex projects will require more complicated plans and application materials, which takes time to prepare. For less complicated projects, the City offers concurrent review of some project types, including ADUs, where zoning review and building permit review may be conducted at the same time.

Availability of an Adequate Construction Workforce

The availability of an adequate construction workforce is necessary to build the numerous residential developments needed to meet the region's housing goals. Program 42 of the Housing Element commits the City to consulting with stakeholders, including representatives from the residential construction industry and representatives from labor organizations, on housing policy changes. This provides an opportunity for discussion and consideration of potential impacts to the supply of construction labor when adopting housing policy changes.

Governmental Constraints

Governmental constraints are barriers to building housing that the governments can exercise some control over through regulatory changes, process improvements, and community planning.

Government Funding for Affordable Housing

Construction of affordable housing requires large subsidies from Federal, State, County or local government sources in order to be financially feasible, yet there is not nearly enough funding available to subsidize all of the affordable housing needs in the region. Plan Bay Area 2050 (the Regional Transportation Plan/Sustainable Communities Strategy for the San Francisco Bay Area) estimates the cost of constructing enough deed restricted affordable homes to meet the needs of low-income households in the Bay Area through 2050 is $219 billion.

For local context, in 2021 Fremont issued a Notice of Funding Availability (NOFA) to provide predevelopment and acquisition assistance for new affordable housing developments. The three affordable housing proposals that were selected for funding had estimated development costs ranging from $652,000 per unit to $810,000 per unit. Each of those affordable housing developments required substantial subsidies from multiple sources to make the project feasible, including between $60,000 and $130,000 per unit in assistance from the City of Fremont's NOFA.

The availability of funding for affordable housing at the State and Federal levels is unpredictable, and will change during the planning period, based on market conditions and competing priorities. At the local level, the City of Fremont's affordable housing fund relies on affordable housing fees paid from market rate residential and commercial development projects. If market conditions weaken for market rate residential and commercial development, the availability of local funding to support affordable housing would be impacted as well.

General Plan Land Use

In 2011, the City completed a major comprehensive update of the City's General Plan. The General Plan recognized that, as the City's vacant land supply dwindles, the ability to house our population becomes a challenge. For many reasons—preservation of open space, reducing vehicle miles traveled and greenhouse gas emissions, supporting the vitality of the City's core districts—the General Plan focused most (but not all) future housing growth near transit hubs and corridors, to become more urban in strategic locations. The General Plan recognizes that future growth will need to occur more densely than has occurred in Fremont's past, and a growing share of future growth will need to take place within commercial districts through mixed-use developments. The following are several land use goals and policies from the General Plan that emphasize strategically urban growth to address the community's housing needs:

> Goal 2-1: City Form and Structure - A city transformed from an auto-oriented suburb into a distinctive community known for its walkable neighborhoods, dynamic city center, transit-oriented development at focused locations, attractive shopping and entertainment areas, thriving work places, and harmonious blending of the natural and built environments.
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> Policy 2-1.7: Becoming a More Transit-Oriented City – Plan for Fremont's transition to a community that includes a mix of established lower-density neighborhoods and new higher-density mixed-use neighborhoods with access to high-quality transit.

Policy 2-1.8: Mixed Use Emphasis – Encourage mixed-use development combining residential and commercial uses in transit-oriented development areas and also in select commercial areas as indicated on land use map.

Policy 2-1.11: Infill Emphasis – Focus new development on under-developed or "skipped over" sites that are already served infrastructure and public streets.

Goal 2-3: Complete Neighborhoods - Compact, walkable, and diverse neighborhoods, each with an array of housing types and shopping choices, with parks, schools, and amenities that can be conveniently accessed by all residents.

Policy 2-3.4: Infill Development – Support infill development on vacant and underutilized land in Fremont's neighborhoods, particularly where there are vacant lots or parcels that create "gaps" in the urban fabric…

Policy 2-3.8: Location of Higher Density Housing – Generally locate new higher density housing in Priority Development Areas and the TOD Overlay where there is good access to transit, proximity to local-serving commercial uses, and to collector or arterial streets

The Land Use Element of the General Plan establishes various land use designations that allow for housing at a variety of types and densities, from rural/hillside areas to high density urban residential. The Land Use Element also includes a Transit Oriented Development (TOD) Overlay Designation, which generally applies to areas within ½ mile of a transit station and allows increased density while minimizing parking. These land use designations focus the highest levels of residential densities around transit hubs and Town Centers, while allowing lower residential densities in areas less served by transit.

The land use designations where the greatest intensity of residential development is expected to occur during the planning period are City Center, Town Center and Urban Residential and Mixed Use.

- **City Center.** The City Center designation applies to the 460+ acre area in the heart of Fremont, anchored by the Fremont Bart Station and the Downtown District. The City Center Community Plan and the Downtown Community Plan provide for a range of uses consistent with an urban, walkable, transit-oriented environment, including multifamily residential uses that are intended to add to the vibrancy of the area. The minimum density of residential development in the City Center is 50 dwelling units per acre, with no maximum density.

- **Town Center.** The Town Center designation applies to the original business districts of Niles, Irvington, Centerville, and Mission San Jose, and a cluster of established neighborhood shopping centers in the Warm Springs District. Each area is intended to be pedestrian-oriented with an attractive and distinct identity, along with amenities such as small parks, public art, and plazas that creates a Main Street ambiance. Residential uses are permitted as part of mixed-use developments to support vibrancy and activity in these centers. The Irvington and Centerville Town Centers are anchored by major transit hubs and are within TOD Overlay Districts that provide for higher density residential development. There are no density maximums in the Town Center designation. Mixed-use are subject to a maximum FAR of 1.25. FAR increases up to 2.5 are permitted where a TOD overlay has been applied. Minimum FARs of 0.5 and minimum residential densities of 30 units/acre also apply when the site is located within the TOD overlay.

- **Urban Residential.** The Urban Residential designation facilitates the construction of apartment buildings and condominiums that are generally four stories or more, with a density range between 30-70 dwelling units/acre (50-70 dwelling units per acre when in a TOD Overlay District). Densities above 70 units per net acre may also be permitted with a density bonus.

- **Mixed Use.** The Mixed Use designation applies to specific areas of the City that may be appropriate for mixed commercial and residential projects, but are not within a TOD overlay. This designation has been applied to areas of the City that are beyond the half-mile radius of the BART and ACE stations, but still would be attractive locations for projects that combine commercial and higher-density residential uses. Housing is permitted but not required; however, a substantially higher FAR is applied to incentivize mixed use development on these properties. The allowable FAR in areas designated Mixed Use ranges from a maximum of 0.50 for non-residential projects to a maximum of 1.25 for mixed-use projects that include residential. There are no density maximums in the Mixed-Use designation. As a program of the Housing Element, a minimum residential density will be established for the Mixed Use designation to ensure that Mixed Use sites are not underutilized for residential purposes.

Table 5-1. Land Use Designations Permitting Residential

Residential Designations	**Density (dwelling units/net acre)**
Hillside Residential	Less than 8.7 (if previously subdivided); Less than 2.3 elsewhere
Low Density	2.3 to 8.7
Low-Medium Density	8.8 to 14.5
Medium Density	14.6 to 29.9
Urban Residential	30 to 70
Urban Residential/TOD Overlay	50 to 70
Commercial Designations	**Density (dwelling units/net acre)**
City Center	50 minimum; no maximum
City Center/TOD Overlay	50 minimum; no maximum
Town Center	No minimum; no maximum
Town Center/TOD Overlay	30 minimum; no maximum
General Commercial	No minimum; no maximum
General Commercial/TOD Overlay	No minimum; no maximum
Mixed Use	No minimum; no maximum
Innovation Center	**Density (dwelling units/net acre)**
Innovation Center (within ¼ mile of BART Station)	50 minimum; no maximum
Innovation Center (outside ¼ mile of BART Station)	30 minimum; no maximum

General Plan Consistency

Internal consistency within the General Plan is maintained throughout the planning period whenever the City Council considers General Plan Updates and Amendments and as part General Plan Annual Progress Report (APR) submitted pursuant to Government Code Section 65400.

General Plan Updates may be periodically proposed by City staff throughout the planning period, typically to comply with new state laws and requirements. When staff propose a General Plan Update, the Update is analyzed for consistency with existing General Plan policies as part of the staff report prepared for the

Planning Commission and City Council regarding the proposed Update. Similarly, when private applicants propose a General Plan Amendment in order to facilitate a private development project, City staff will analyze the consistency of the proposed land use change with existing General Plan policies in the staff report prepared for the Planning Commission and City Council.

Pursuant to Government Code 65400, the City is additionally required to submit a General Plan APR annually to HCD and the Governor's Office of Planning and Research. The City has complied with this requirement in each year of the 2015-2023 planning period, and in fact updated its General Plan APR template in 2020 to ensure consistency with statutory requirements. The City's General Plan APR analyzes the City's compliance with HCD's General Plan Guidelines; identifies major revisions or updates to the General Plan completed within the past year; and makes note of any General Plan Amendments adopted within the past year. The General Plan APR confirms that the City is maintaining internal General Plan consistency, as well as consistency between the General Plan and specific/community plans, throughout the planning period.

Consistency between the General Plan and Zoning Ordinance is maintained throughout the planning period via periodic zoning clean-ups initiated by City staff. All General Plan land use designations in the City correspond with one or more implementing zoning districts, as documented in the General Plan's Implementation Element. Since the adoption of the 2011 General Plan, staff has occasionally identified a site where zoning is accidentally mismatched with the underlying General Plan land use designation. When this occurs, staff carefully documents the inconsistency, and resolves the mismatch through a General Plan and/or Zoning "cleanup" package which is brought forward every 12-18 months to address minor issues within the City's Zoning Ordinance. In the interim, staff apply the requirements of SB 330 for sites with inconsistent General Plan and zoning designations, when applicable. All of the sites identified in the Chapter 8, Sites Inventory and Analysis, have a zoning designation that is consistent with the underlying General Plan Land use designation.

Zoning for a Diversity of Housing Types

The City's Zoning Regulations accommodate a diversity of housing types in numerous zoning districts to meet the varying needs of the community. The following table summarizes the types of residential uses permitted in the City and the zoning districts in which they are permitted. The City's zoning regulations allow housing as a principally permitted use in most situations. However, in some cases, a Conditional Use Permit or a Zoning Administrator Permit are required. For example, residential uses are permitted in the C-O (Commercial-Office) and C-N (Commercial-Neighborhood) districts as part of a mixed-use project with a use permit. Conditional Use Permit and Zoning Administrator Permit applications are reviewed on a case-by-case basis, and conditions may be applied to ensure that the use is compatible with surrounding uses and is not detrimental to public health and welfare.

Table 5-2. Zoning for a Variety of Housing Types

Housing Type	Zones Permitting by Right	Zones Permitting with Use Permit
Accessory Dwelling Units	All zones where residential is permitted	None
Caretaker Quarters	Industrial Zones: None	Industrial Zones: All
Continuing care retirement communities and residential care facilities for the elderly	Residential Zones: R-3, R-G	Residential Zones: R-1, R-2
	Commercial Zones: TC-T	Commercial Zones: C-O, C-N, TC-P
	City Center Zones: None	City Center Zones: CC-UO, CC-UN
Duet Dwellings	Residential Zones: R-2	Residential Zones: None
	Commercial Zones: MX, TC-P, TC-T	Commercial Zones: C-O, C-N
Duplex Dwellings	Residential Zones: R-1, R-2	Residential Zones: None

Housing Type	Zones Permitting by Right	Zones Permitting with Use Permit
	Commercial Zones: MX, TC-P, TC-T	Commercial Zones: C-O, C-N
Dwelling Groups	Residential Zones: None	Residential Zones: R-1, R-2
Emergency Shelters	Residential Zones: None	Residential Zones: R-1, R-2, R-G, R-3
	Commercial Zones: None	Commercial Zones: C-O, C-N, C-G, MX, TC-T, TC-P
	City Center Zones: None	City Center Zones: None
	Downtown Zones: None	Downtown Zones: None
	WSI Zones: None	WSI Zones: WSI-1, WSI-3, WSI-4, WSI-8, WSI-9
	Industrial Zones: I-S	Industrial Zones: I-T, I-G
Farmworker Housing	Residential Zones: None	Residential Zones: All
Junior Accessory Dwelling Units	All districts where a single-family residential unit is permitted	None
Live-Work Units	Residential Zones: None	Residential Zones: R-3
	Commercial Zones: None	Commercial Zones: MX, TC-P, TC-T
	City Center Zones: All	City Center Zones: None
	Downtown Zones: None	Downtown Zones: D-MD, D-E
	WSI Zones: WSI-3, WSI-4, WSI-9	WSI Zones: None
Manufactured or Mobile Homes	Residential Zones: All	Residential Zones: None
Multifamily Dwellings	Residential Zones: R-3, R-G	Residential Zones: None
	Commercial Zones: MX, TC-P, TC-T	Commercial Zones: C-O, C-N
	City Center Zones: All	City Center Zones: None
	Downtown Zones: D-CA, D-MD, D-E	Downtown Zones: None
	WSI Zones: WSI-3, WSI-4, WSI-9	WSI Zones: None
Navigation Centers	All Zones	None
Nursing Care Facilities	Residential Zones: None	Residential Zones: R-2, R-3, R-G
	Commercial Zones: None	Commercial Zones: C-N, C-G, TC-T
	City Center Zones: None	City Center Zones: CC-UO, CC-UN
Residential Care Facilities, Special	Residential Zones: All	Residential Zones: None
	Commercial Zones: C-O, C-M, MX, TC-P, TC-T	Commercial Zones: None
	City Center Zones: All	City Center Zones: None
	Downtown Zones: D-CA, D-MD, D-E	Downtown Zones: None
	WSI Zones: WSI-3, WSI-4, WSI-9	WSI Zones: None
Rooming and Boarding Houses	Residential Zones: None	Residential Zones: R-2, R-3, R-G districts
Single-Family Dwelling	Residential Zones: R-1, R-2, R-G	Residential Zones: None
	Commercial Zones: C-O, C-M, MX, TC-P, TC-T	Commercial Zones: C-O, C-N
Single Room Occupancy Units	Residential Zones: R-3, R-G	Residential Zones: None
	Commercial Zones: MX, TC-P, TC-T	Commercial Zones: C-O, C-N
	City Center Zones: All	City Center Zones: None
	Downtown Zones: D-CA, D-MD, D-E	Downtown Zones: None
	WSI Zones: WSI-3, WSI-4, WSI-9	WSI Zones: None
Skilled Nursing Health Facilities	Residential Zones: None	Residential Zones: None
	Commercial Zones: None	Commercial Zones: C-N, C-G, TC-T

Housing Type	Zones Permitting by Right	Zones Permitting with Use Permit
	City Center Zones: None	City Center Zones: CC-UO, CC-UN
Supportive Housing	Residential Zones: All	Residential Zones: None
	Commercial Zones: C-O, C-M, MX, TC-P, TC-T	Commercial Zones: None
	City Center Zones: All	City Center Zones: None
	Downtown Zones: D-CA, D-MD	Downtown Zones: None
	WSI Zones: WSI-3, WSI-4, WSI-9	WSI Zones: None
Transitional Housing	Commercial Zones: C-O, C-M, MX, TC-P, TC-T	Commercial Zones: None
	City Center Zones: All	City Center Zones: None
	Downtown Zones: D-CA, D-MD	Downtown Zones: None
	WSI Zones: WSI-3, WSI-4, WSI-9	WSI Zones: None

Additional discussion regarding how the City regulates certain types of housing is provided in the following sections.

Accessory Dwelling Units

In Government Code Section 65852.150, the California Legislature found and declared that allowing accessory dwelling units (ADUs) in zones that allow single-family and multifamily uses provides additional rental housing and is an essential component in addressing California's housing needs. Over the years, ADU law has been revised to improve its effectiveness at creating more housing units. The most recent changes to State ADU law came into effect on January 1, 2021. The City subsequently adopted a local ordinance (FMC Section 18.190.005) implementing those changes.

The City allows ADUs and Junior ADUs (smaller units less than 500 square feet converted out of space in a single-family home) by-right in all zoning districts where a single-family dwelling, two-family dwelling, or multifamily dwelling is a permitted use wherein a single-family dwelling, two-family dwelling, or multifamily dwelling has been authorized. ADUs are not required to meet the density requirements of the general plan or zoning ordinance and do not count toward the permissible number of units per acre (or required lot area per dwelling).

The City facilitates ADU development in various ways. Notably, the City waives development impact fees for ADUs and JADUs and offers a pre-approved ADU program. The pre-approved ADU program provides preapproved plans for detached ADUs that are submitted by designers, architects, builders, and other qualified professionals. Pre-approved ADU plans can be used throughout Fremont with an expedited plan review timeline and lower permitting costs.

During outreach efforts, local ADU developers communicated that increasing predictability in the review process and simplifying standards would help reduce constraints to ADU development. Increasing predictability would include communicating all requirements and expectations up front and having reliable, consistent sources of information.

Supportive and Transitional Housing

Transitional housing is a type of supportive housing used to facilitate the movement of people experiencing homelessness into permanent housing. A person experiencing homelessness may live in a transitional apartment for a predetermined period of time, however not less than six months while

receiving supportive services that enable independent living. Supportive housing is permanent rental housing linked to a range of support services designed to enable residents to maintain stable housing and lead fuller lives.

In accordance with Government Code Section 65583(a)(5), the City allows transitional housing and supportive housing in all zoning districts allowing residential uses and only applies restrictions that apply to other residential dwellings of the same type in the same zone. The City has audited its zoning ordinance to ensure compliance with this requirement and found that transitional and supportive housing was unintentionally excluded from the list of permitted uses in the D-E zone. This typo will be corrected in an upcoming zoning ordinance update, as stated in Program 76. Per AB 2162, which became effective on January 1, 2019, the City must also allow 100 percent affordable projects that include 25 percent, or 12 units of supportive housing, by right where multi-unit and mixed-use development is permitted. The requirements of AB 2162 are currently uncodified in the City's Zoning Ordinance. As a program of the Housing Element, AB 2162 will be integrated into the zoning code (Program 76).

Single Room Occupancy Units

A single-room occupancy (SRO) unit is a small dwelling, less than 300 square feet, that serves as a source of affordable housing for individuals and can serve as an entry point into the housing market for people who previously experienced homelessness.

The City's Zoning Code classifies SRO units as a multifamily dwelling unit, and they are therefore permitted in all zoning districts that permit multifamily housing. SRO units are counted as ½ unit for density calculations. In outreach discussions with the development community, most developers were unaware of the significant additional density that SROs could provide. As a program in the Housing Element, the City will develop informational materials and market SRO requirements to the development community through the City's Development Digest newsletter.

SROs also have a reduced parking requirement of 0.5 parking spaces per unit for resident parking, an 0.5 parking spaces per unit for guest parking to facilitate their production. Program 34 calls for studying parking requirements for SROs and eliminating them if feasible.

As discussed in the Fees Section of this chapter, development impact fees and affordable housing fees are significantly less for SROs than standards sized residential units. The City's fee schedule incentivizes development of small units through lower fees.

Manufactured Housing

In accordance with the requirements of Government Code Section 65852.3(a), the City of Fremont's zoning code permits manufactured housing in the same manner and in the same zones as conventional or stick-built structures. FMC Section 18.190.350(g) states that manufactured homes may be located in any residential zoning district provided that the manufactured home conforms to the same development standards applicable to the zoning district in which it is to be located.

Urban Lot Splits and Urban Housing Developments

Senate Bill (SB) 9 (Atkins), which became effective on January 1, 2022, allows property owners within single-family residential zones to build two units and/ or to subdivide a lot into two parcels, for a total of four units.

The bill requires approval of the following development activities:

- Two-unit housing development – Two homes on an eligible single-family residential parcel (whether the proposal adds up to two new housing units or adds one new unit to one existing unit).

- Urban lot split - A one-time subdivision of an existing single-family residential parcel into two parcels. This would allow up to four units (unless a jurisdiction decides to allow additional units).

Jurisdictions may only apply objective zoning, subdivision, and design standards to these projects, and these standards may not preclude the construction of up to two units of at least 800 square feet each. Jurisdictions can conduct objective design review but may not have hearings for units that meet the state rules (with limited exceptions).

SB 9 applies to the City's R-1 districts, as well as existing Planned Districts that are based on an R-1 district. As a program in the Housing Element, the City will develop technical guidance and a local ordinance to implement the requirements of SB 9 and to create objective standards that will provide greater certainty to property owners considering developing their property under SB 9. Since Urban Lot Splits and Urban Housing Developments will have a substantially different character than standard R-1 subdivisions, the local ordinance will involve the creation of development standards which will be different than those which apply to the underlying R-1 zoning district. The R-1 development standards shown in Table 5-3 would be modified to accommodate SB 9 developments and would therefore not be a constraint to Urban Lot Splits and Urban Housing Developments.

Housing for Persons with Disabilities

Persons with special needs or disabilities have a number of housing needs related to housing accessibility; access to transportation, employment, and commercial services; and alternative living arrangements that include on-site or nearby supportive living services.

The City's Zoning Ordinance allows small group homes (limited to six or fewer persons) in all residential zones as a permitted use. The City's Zoning Ordinance uses the term "Special Residential Care Facilities" for these small group homes. The Ordinance defines Special Residential Care Facilities as: "Any state authorized, certified or licensed family care home, foster home or group home serving six or fewer persons with disabilities, children, or the elderly that provide care on a twenty-four-hour-a-day basis." Residential care facilities for seven or more persons are classified as rooming houses and boarding houses and are allowed in the R-2, R-3 and R-G zoning districts with a conditional use permit. Program 69 would create a separate zoning category specifically for all "residential care facilities", regardless of the reason why residents need residential care. The new zoning permissions would be consistent with the current category of "residential care facilities for the elderly" and would permit residential care facilities by-right within all residential zones. There are no geographical spacing or siting requirements for group homes or residential care facilities. Additionally, continuing care retirement communities, nursing care facilities, and skilled nursing facilities are permitted by right, or permitting conditionally through a CUP or a ZAP in a variety of zoning districts. These uses support a range of services to persons with disabilities requiring a range of needs.

The Fremont Municipal Code defines "family" in FMC 18.25.1060 as, "one person living alone, or two

or more persons living together who have made social, economic and psychological commitments to each other and who constitute a bona fide single housekeeping unit." This definition treats housing for groups that are not related by blood or marriage but are living as a single household in the same manner it treats related households. For example, residential care facilities, group homes, housemates, and combined households are all considered families under this definition.

The City has reviewed published guidance from 21 Elements and Mental Health Advocacy Services, Inc. regarding the definition of a family to support housing for people with disabilities. The City's current definition of a family is in substantial compliance with the recommended definitions provided in this manual, in that it does not distinguish between related and unrelated persons and does not include a numerical limitation on the number of people in a family. However, the recommended definitions also suggest that cities explicitly state that residents of residential care facilities and group homes for people with disabilities are considered a family. Program 69 has been modified to commit to revision of the definition of "family" in accordance with this published guidance from 21 Elements and Mental Health Advocacy Services, Inc. This revision will not functionally change the definition of a family that the City employs, but it will provide greater clarity during implementation of the zoning ordinance.

Currently, Fremont has no specific land use regulations (parking, open space, etc.) applicable specifically to housing for persons with disabilities. Land use and zoning regulations apply as they would to other applications for development. In certain situations, zoning and land use requirements can be reduced for housing units for persons with disabilities.

The City has a Universal Design Ordinance (FMC Chapter 15.67) for new construction, which is intended to make housing accessible and adaptable to the needs of inhabitants as they age or encounter physical challenges. The City's Universal Design Ordinance requires builders to offer certain accessibility features to consumers as an upgrade option. Incorporating these features at the building stage adds minimal cost to a new home and saves the need for future retrofits.

The City also has a Reasonable Accommodations Ordinance (FMC Chapter 18.265). Its purpose is to provide reasonable accommodation in the application of zoning regulations for persons with disabilities seeking fair access to housing. The ordinance was amended in 2004 to provide for exemptions to public hearing requirements on routine requests (e.g., setback exemptions for accessibility improvements and reduced parking for those where the disability clearly limits or precludes driving). The City does not charge a fee for processing reasonable accommodation requests. The ordinance provides that any person may request a reasonable accommodation in the application of the City's zoning laws, based upon the disability of the residents in the project. Thus, not only persons with disabilities may apply for a reasonable accommodation but also a housing provider could make the request for the accommodation on behalf of persons with disabilities who will reside in the project. The decision made on the Reasonable Accommodation request must be supported by written findings and the applicant must be notified in writing of the action taken. The required findings for approval a Reasonable Accommodations request are as follows:

- The housing will be used by a disabled person;
- The requested accommodation is necessary to make specific housing available to a disabled person;
- The requested accommodation would not impose an undue financial or administrative burden on the city;
- The requested accommodation would not require a fundamental alteration in the nature of a city program or law, including land use and zoning; and

- The requested accommodation would not result in a concentration of uses otherwise not allowed in a residential neighborhood to the substantial detriment of the residential character of that neighborhood.

The approval authority for a Reasonable Accommodations request is the City's Community Development Director. His/her decision can be reviewed and appealed to the City Council. While consistency with Fair Housing Act is of course implied, the Ordinance does not specifically state that all findings and decisions will be consistent with the Act.

In practice, the current approval findings have not been a constraint on Reasonable Accommodation approvals, as the City approved all Reasonable Accommodation requests that it received during the past planning period. However, the findings for a Reasonable Accommodation currently include some subjective judgements. For example, finding number five requires staff to make subjective judgements regarding what consists of a "concentration" of unpermitted uses and what consists of a "substantial detriment of the residential character" of a neighborhood. These subjective findings may reduce approval certainty and discourage people from applying for a Reasonable Accommodation in the first place. To remove this potential constraint, the City shall revise the Reasonable Accommodation findings to make them objective, as discussed in Program 69. The objective findings shall facilitate the speedy approval of reasonable accommodation requests to facilitate the development of housing opportunities for people with disabilities.

Live/Work Units

Live/work units consist of both commercial and residential components within a single unit, which are used as the primary dwellings and business locations by the occupant(s). The Zoning Ordinance requires that at least one tenant of each live/work unit obtain and keep current a city of Fremont business license. The types of commercial uses allowed in a live/work unit are limited to avoid conflicts. For example, businesses that involve the use hazardous materials are not permitted. Live/work units are permitted by right in all of the City Center zoning districts, and the WSI zoning districts that permit housing.

Live/work units are a principally permitted use in the City Center zoning districts. They are also conditionally permitted in the R-3 (multifamily residential) zoning district, several Downtown Districts (D-E and D-MD), and various commercial districts (MX, TC-P and TC-T). When part of a mixed-use development, the zoning code does not allow a live/work unit by itself to satisfy the commercial space requirement under FMC Section 18.45.040.

Live/work units are subject to the provisions of the zoning district in which they are located, the special provisions in Section 18.190.290, and as the permitted uses may be modified by the approval authority to ensure compatibility of uses.

Housing for Farmworkers

While the City of Fremont has a minimal number of residents employed in the agricultural sector, providing farmworker housing is a matter regional concern. Per the USDA, today's farmworkers can commute up to 75 miles to the workplace. Based on this, the need for housing for agricultural workers is a regional responsibility, not just the areas with a robust agricultural economy. Farmworkers generally receive wages that are considerably lower than other jobs and may have temporary housing needs. Workers often need access to group housing or temporary (non-emergency) shelter. Finding decent and affordable housing can be challenging, particularly in the

current housing market.

California Health and Safety Code Section 17021.5 generally requires employee housing for six or fewer persons to be treated as a single-family structure and residential use. Fremont treats housing for groups that are not related by blood or marriage but are living as a single household in the same manner it treats other single housekeeping units. Therefore, farmworker housing for groups less than six would be permitted in any zone permitting a single-family residence.

California Health and Safety Code Section 17021.6 requires that farmworker housing of no more than 36 beds in a group quarters or 12 units shall be deemed an agricultural use. No conditional use permit, zoning variance, or other discretionary zoning clearance shall be required of this housing that is not required of any other agricultural activity in the same zone. Agricultural uses are permitted with a Zoning Administrator Permit in the Open Space zoning district (within General, Hillside, Private, and Resource Conservation/Public designated areas), as well as within R-1 and R-2 zoning districts. Consistent with State law, FMC Section 18.190.350(c) allows agricultural mobile homes for employees and relatives of the proprietor of a principal agricultural use where a Zoning Administrator Permit was approved for the agricultural use.

The City's zoning ordinance also allows a variety of housing types that could support farmworkers including multifamily, SROs, emergency shelters and ADUs, which are described in more detail in other sections.

Mobile Home Parks

FMC Section 18.190.350(g) states that mobile homes may be located in any residential zoning district provided that the manufactured home conforms to the same development standards applicable to the zoning district in which it is to be located.

The City currently enforces a Mobile Home Space Rent Stabilization Ordinance (FMC Chapter 9.55), which is intended to protect mobile home owners from unreasonable rent increases and other abusive or disruptive practices by park owners. The Ordinance provides limits and a process for rent increases.

This Ordinance was established because mobile homes are often owned by senior citizens, persons on fixed incomes, and persons of low and moderate income, significant rent increases fall upon these individuals with particular harshness. Mobile home owners, unlike apartment tenants or residents of other rental units, are in the unique position of having made a substantial investment in a residence for which space is rented or leased. Alternative sites for the relocation of mobile homes are difficult to find due to the shortage of vacant mobile home spaces, the restrictions on the age, size, or style of mobile homes permitted in many mobile home parks and requirements related to the installation of mobile homes, including permits, landscaping and site preparation. Additionally, the cost of moving a mobile home is substantial and the risk of damage in moving is significant. Thus mobile home owners are limited in options, and during times of soaring rents can be subject to sudden unreasonable rent increases.

Short Term Rental Units

The City does not currently have an ordinance in place specifically for the regulation of short term rental units (rented for less than 30-days), although the Zoning Ordinance specifically disallows them in ADUs. Based on current estimates, there are more than 300 short term rental units active in the

City. This estimate may potentially be low based on the unit vacancy in Chapter 4, Housing Needs Assessment. This is not a significant percent of the City's total housing stock, but does have an incremental impact on the availability of long term housing. As a program in the Housing Element, a Short Term Rental Ordinance will be prepared to encourage long term rental units by limiting the use of residential units for short term rentals.

Emergency Homeless Shelters

As required by Government Code Section 65583(a)(4), the City must identify at least one zoning district where emergency shelters are allowed as a permitted use without a conditional use permit or other discretionary action. Emergency shelters, both permanent and temporary, are a permitted use (by-right, no discretionary approval) in the I-S (Service Industrial) zoning district. Emergency shelters are also permitted with a conditional use permit in various commercial, industrial, and WSI zoning. Lands designated I-S are in close proximity to major arterials, transit and neighborhood services. Notably, much of the City's I-S zoned land is located along Osgood Road, which is the City's primary north-south transit corridor and is in close proximity to the future Irvington BART Station. The I-S zoning district is the City's lowest-intensity industrial zone and is intended to be compatible with nearby commercial and residential districts. Other sensitive uses allowed in the I-S zoning district include religious facilities, elementary/secondary schools, and indoor recreation facilities. The minimal presence of hazardous materials and heavy industrial processes make the I-S zone appropriate for human habitation at an emergency shelter.

To provide additional flexibility in the siting of emergency shelters, under Resolution No. 2018-60, the City declared a local Emergency Shelter Crisis on September 18, 2018. Under the Shelter Crisis Act, the City is authorized to provide emergency housing, shelters, bridge housing communities and other services to the homeless. The law provides that, "… any state or local regulatory statue, regulation, or ordinance prescribing standards of housing, health, or safety shall be suspended to the extent that strict compliance would in any way prevent, hinder, or delay the mitigation of the effects of the shelter crises." Furthermore, the law states the governing body may take such action as is necessary to carry out the provisions of the Shelter Act. In addition, upon a declaration of a shelter crisis, the city would be immune from liability for ordinary negligence relative to the "conditions, acts, or omissions directly related to, and which would not occur but for, the provision of emergency housing." While land use and zoning may be considered for informational purposes, City Council is not restricted by the location of the shelter due to broadened and more flexible land use compliance standards likely applicable during a declared shelter emergency as described above. The City will continue to recognize the Emergency Shelter Crisis declaration until the City's unsheltered population has significantly improved. The City will be opportunistic in taking advantage of the additional flexibility for shelter placement provided for under the emergency declaration.

The Sunrise Village emergency shelter located at 588 Brown Road provides 66 beds with supportive services on a two-acre parcel (the shelter building itself is 17,500 square feet). Using Sunrise Village as an example, it can be conservatively assumed that a shelter can provide 33 beds/acre. The 2022 Point-in-Time Count, conducted on February 23, 2022, identified 1,026 homeless individuals in Fremont, 866 of which were unsheltered. In order to shelter Fremont's entire homeless population at 33 beds/acre, this would require 26 acres of land. Of the 473 acres in the I-S zoning district, 37 acres have been identified as being suitable for conversion or development or conversion to an emergency shelter due to the lack of buildings and large physical improvements on the site. With the additional flexibility for siting of emergency shelters in any zoning district provided under Fremont's Emergency Shelter Crisis declaration, there is sufficiently zoned land to meet Fremont's estimated emergency shelter need.

California Government Code Section 65583(a)(4) limits regulation of emergency shelters to only development and management standards that apply to residential or commercial development within the same zone except that a local government may apply written, objective standards that include all of the following:

- The maximum number of beds or persons permitted to be served nightly by the facility.
- Sufficient parking to accommodate all staff working in the emergency shelter, provided that the standards do not require more parking for emergency shelters than other residential or commercial uses within the same zone.
- The size and location of exterior and interior onsite waiting and client intake areas.
- The provision of onsite management.
- The proximity to other emergency shelters, provided that emergency shelters are not required to be more than 300 feet apart.
- The length of stay.
- Lighting.
- Security during hours that the emergency shelter is in operation.

Consistent with State law, FMC Section 18.190.150 provides objective performance standards for emergency shelters for the above to facilitate the permitting process. The objective standards provide for the following:

- Proximity to Other Emergency Shelters. Three hundred feet from any other emergency shelter.
- Hours of Operation. Facilities shall establish set hours for client intake and discharge.
- Maximum Number of Beds. Limited to 100 beds.
- Parking. A minimum of three parking spaces, plus one additional parking space per 10 beds. In addition, one parking space per 250 square feet for supportive services and offices.
- Yards. Yards shall conform with the zoning district yard requirements in which it is located.
- On-Site Management. On-site personnel shall be provided at all times.
- Waiting and Client Intake Area. A waiting and client intake area of not less than 100 square feet shall be provided.
- Lighting. Facilities shall provide security and safety lighting in the parking lot, and on buildings and pedestrian accesses.
- Security. Facilities shall provide secure areas for personal property.
- Life Safety and Security. All projects shall be evaluated for compliance with building codes, fire codes and local building security regulations.

The City's Zoning Ordinance permits temporary shelters by a quasi-public faith-based organization at existing religious facilities that assure compatibility of shelter activities with surrounding uses and provide a safe place for individuals and families to obtain temporary shelter. Faith-based temporary shelters are a permitted use within any zoning district, provided, that they are located at an existing religious facility, subject to the requirements of a faith-based temporary shelter permit as provided in FMC Section 18.190.155.

The City's Zoning Ordinance also allows safe parking sites as an ancillary use at properties with permitted assembly uses, quasi-public facilities (operated by a private, nonprofit educational, religious, recreational, charitable or medical institution with the primary purpose of serving the general public), and public facilities. Safe parking sites are locations that provide homeless individuals and/or families

living in a vehicle a dedicated, safe place to park.

AB 101, which became effective on January 1, 2020, requires that a Low Barrier Navigation Center development be a use by right in areas zoned for mixed uses and nonresidential zones permitting multifamily uses if it meets specified requirements. AB 101 defines a "Low Barrier Navigation Center" as a Housing First, low-barrier, service-enriched shelter focused on moving people into permanent housing that provides temporary living facilities while case managers connect individuals experiencing homelessness to income, public benefits, health services, shelter, and housing. The bill would define the term "use by right" in this context to mean that the local government's review of the Low Barrier Navigation Center development may not impose certain requirements, such as a conditional use permit or other discretionary review or approval. The City's Emergency Shelter Crisis declaration allows the siting of a Low Barrier Navigation Center in any zoning district, but the requirements of AB 101 have not yet been codified in the Zoning Ordinance. As a program in the Housing Element, the zoning code will be amended to integrate the requirements of AB 101.

Residential Uses in Commercial Zones

Standalone Commercial Developments

In commercial zoning districts where residential uses are permitted, the City's zoning regulations allow for commercial-only developments without a residential component. The development of a commercially zoned site without a residential component could potentially reduce the amount of land available in the City for housing development. However, commercial-only development occurred infrequently during the previous planning period, and will continue to be unlikely to occur during the current planning period.

During the 2015-2023 planning period, a total of 15 parcels in the Housing Element sites inventory, accounting for 26.86 acres, were developed within zones that allowed for commercial uses without a residential component. 14 out of 15 parcels were permitted with residential development, which accounted for 98% of the total acreage. With the current weakness of the commercial sectors of the economy, commercial-only development in the City's commercial zones is anticipated to continue to be infrequent.

Additionally, developers are incentivized to include a residential component because commercial-only development is subject to discretionary review. The developer would be provided greater certainty in the review process by providing a residential component and receiving the protections provided under the Housing Accountability Act. As detailed in the Fees Section of the chapter, commercial developments are also subject to a "commercial linkage fee," a per square foot fee that funds affordable housing development. This assists in advancing the City's housing goals through commercial development.

The site capacity analysis in Chapter 8, Sites Inventory and Analysis, documents an adjustment factor utilized to account for the potential for commercial-only development in commercial zones in the City's sites inventory.

Minimum Residential Density

Commercial districts within a TOD Overlay District have minimum residential density requirements. In commercial districts outside of a TOD, there is no required minimum residential density. A program is included in the Housing Element (Program 35), which would set a minimum density in these areas to promote the efficient use of these sites for housing.

Development Standards

The City regulates type, location, and scale of residential development primarily through the Planning and Zoning Code (FMC Title 18). Zoning regulations are designed to protect and promote the health, safety, and general welfare of residents, implement General Plan policies, and ensure development intensities called for in the General Plan are achieved.

The table below provides an overview of primary development standards that affect the maximum development intensity of a housing project, including density, height, setbacks, and floor area ratio (FAR). This table does not describe every applicable development standard, nor does it capture development requirements for customized Planned Districts that allow deviation from standard regulations where a development project is consistent with the General Plan and meets other community objectives. The City has over 700 Planned Districts, many of which closely mirror the standard single-family residential zoning districts. Some of these Planned Districts have limitations that limit or prohibit additions, whereas state law provides for additions to provide for an ADU. As the housing stock continues to age, these restrictions may have an increasingly severe effect on the ability to modernize and adapt the housing stock in these neighborhoods. A program has been included in the Housing Element (Program 5) which calls for a complete comprehensive study of existing Planned Districts and development of a program to re-zone some Planned Districts to their most comparable standardized districts. This program will allow additions and modernization of additional single-family housing stock.

The development standards listed below are appropriate to accommodate the maximum residential intensity provided for under the City's General Plan and Zoning Ordinance. If a particular development standard is determined to constrain development to the maximum residential intensity, the City will amend that zoning standard to allow for maximum residential intensity. As a program of the Housing Element (Program 89), each year, as part of the Housing Element Annual Progress Report, staff will identify residential development projects that were approved below maximum density and will prepare a qualitative assessment discussing whether development standards precluded development at maximum density. Where development standards have been shown to preclude development at maximum density, the development standard will be modified.

All zoning regulations and development standards are posted online on the City's webpage and immediately updated when a change occurs.

Table 5-3. Major Development Standards in Zoning Districts that Permit Housing

Zoning District	Max Units	General Plan Designation	Max Height (feet)	Min Setbacks (feet)	Max Lot Coverage (percent)	Max FAR (percent)	Min Site Area (sq ft)
R-1-6	1 unit/lot	Res-Low; Res-Hillside	30	Front: 20 Rear: 25 Interior Side: 5 Exterior Side: 12 Total Sides: 12	40	None[1]	6,000/lot
R-1-6 (GG)	1 unit/lot	Res-Low; Res-Hillside	17	Front: 20 Rear: 25 Interior Side: 5 Exterior Side: 12 Total Sides: 12	40	40	6,000/lot
R-1-8	1 unit/lot	Res-Low; Res-Hillside	30	Front: 25 Rear: 25 Interior Side: 5 Exterior Side: 12 Total Sides: 12	40	None[2]	8,000/lot
R-1-8 (MP)	1 unit/lot	Res-Low; Res-Hillside	27	Front: 20 Rear: 25 Interior Side: 5 Exterior Side: 12 Total Sides: 12	40	None[3]	8,000/lot
R-1-8 (MR)	1 unit/lot	Res-Low; Res-Hillside	27	Front: 20 Rear: 25 Interior Side: 5 Exterior Side: 12 Total Sides: 12	40	None[4]	8,000/lot
R-1-10	1 unit/lot	Res-Low; Res-Hillside	30	Front: 20 Rear: 25 Interior Side: 5 Exterior Side: 12 Total Sides: 12	40	None[5]	10,000/lot
R-1-20	1 unit/lot	Res-Low; Res-Hillside	30	Front: 20 Rear: 25 Interior Side: 5 Exterior Side: 12 Total Sides: 12	40	None[6]	20,000/lot
R-1-40	1 unit/lot	Res-Low; Res-Hillside	30	Front: 20 Rear: 25 Interior Side: 5 Exterior Side: 12 Total Sides: 12	40	None[7]	40,000/lot

Zoning District	Max Units	General Plan Designation	Max Height (feet)	Min Setbacks (feet)	Max Lot Coverage (percent)	Max FAR (percent)	Min Site Area (sq ft)
R-2	2 units/lot	Res-Low; Res-Hillside	30	Front: 20 Rear: 25 Interior Side: 5 Exterior Side: 12 Total Sides: 12	40	None[1]	6,000/lot
R-3-10	8.3-10 du/ac	Res-Low/Med	30	Front: 15 Rear: 10 Side: 10	40	None	6,000
R-3-11	8.8-11 du/ac	Res-Low/Med	30	Front: 15 Rear: 10 Side: 10	40	None	6,000
R-3-14	11.1-14.5 du/ac	Res-Low/Med	36	Front: 15 Rear: 10 Side: 10	45	None	6,000
R-3-15	13-15 du/ac	Res-Low/Med	36	Front: 15 Rear: 10 Side: 10	45	None	6,000
R-3-18	14.6-18 du/ac	Res-Med	36	Front: 15 Rear: 10 Side: 10	50	None	6,000
R-3-23	18.1-23 du/ac	Res-Med	45	Front: 15 Rear: 10 Side: 10	50	None	6,000
R-3-27	25-27 du/ac	Res-Med	45	Front: 15 Rear: 10 Side: 10	55	None	6,000
R-3-30	23.1-29.9 du/ac	Res-Med	45	Front: 15 Rear: 10 Side: 10	55	None	6,000
R-3-35	30-35 du/ac	Res-Urb	52	Front: 15 Rear: 10 Side: 10	55	None	6,000
R-3-50	35.1-50 du/ac	Res-Urb	52	Front: 15 Rear: 10 Side: 10	65	None	6,000
R-3-70	50.1-70 du/ac	Res-Urb	52[9]	Front: 15 Rear: 10 Side: 10	75	None	6,000

Zoning District	Max Units	General Plan Designation	Max Height (feet)	Min Setbacks (feet)	Max Lot Coverage (percent)	Max FAR (percent)	Min Site Area (sq ft)
R-G-40	4,000 sf/unit	Res-Low/Med	45	Front: 25 Rear: 10 Side: 10	50	None	7,500
R-G-29	2,900 sf/unit	Res-Med	45	Front: 25 Rear: 10 Side: 10	50	None	7,500
R-G-24	2,400 sf/unit	Res-Med	45	Front: 25 Rear: 10 Side: 10	50	None	7,500
R-G-19	1,900 sf/unit	Res-Med	45	Front: 25 Rear: 10 Side: 10	50	None	7,500
R-G-16	1,600 sf/unit	Res-Med	45	Front: 25 Rear: 10 Side: 10	50	None	7,500
R-G-15	1,500 sf/unit	Res-Med	45	Front: 25 Rear: 10 Side: 10	50	None	7,500
C-O	None	Com-Gen	35	Front: None Side/Rear: None, except 10 adjacent to residential	None	60	10,000
C-N	None	Com-Gen	35	Front: None Side/Rear: None, except 10 adjacent to residential	None	60	10,000
MX	None	Com-MX	65	Front: None Side/Rear: None, except 10 adjacent to residential	None	~~30~~ 125	20,000
TC-P	None	Com-TC	65[8]	Front: None Side/Rear: None, except 10 adjacent to residential	None	125	None
TC-T	None	Com-TC	45[8]	Front: None Side/Rear: None, except 10 adjacent to residential	None	125	20,000

Zoning District	Max Units	General Plan Designation	Max Height (feet)	Min Setbacks (feet)	Max Lot Coverage (percent)	Max FAR (percent)	Min Site Area (sq ft)
CC-TN	None	City Center	145	Front: 10 Side: None Rear: 10	None	None	None
CC-UO	None	City Center	120	Front: 10 Side: None Rear: 10	None	None	None
CC-UN	None	City Center	75	Front: 10 Side: None Rear: 10	None	None	None
D-CA	None	City Center	8 stories	None	None	None	None
D-MD	None	City Center	8 stories	None	None	None	None
D-E	None	City Center	8 stories	None	None	None	None
WSI-3	None	Innovation Center	135	None	None	None	None
WSI-4	None	Innovation Center	240	None	None	None	None
WSI-9	None	Innovation Center	240	None	None	None	None

Notes:

1 Second stories limited to 50% of first story, or 1,000 sq ft, whichever is less
2 Second stories limited to 50% of first story, or 1,250 sq ft, whichever is less
3 35% if two stories
4 30% if two stories
5 Second stories limited to 50% or first story, or 1,500 sq ft, whichever is less
6 Second stories limited to 50% or first story, or 3,000 sq ft, whichever is less
7 Second stories limited to 50% or first story, or 6,000 sq ft, whichever is less
8 40 feet in Mission San Jose or Niles
9 Height may be increased to 65 feet maximum when within one-half mile of a transit station, and only for those portions of the building that have a step back of 100 feet from any property with a less dense residential general plan designation.

Setbacks

In R-1 single-family residential zoning districts, the vast majority of residential development during the planning period are anticipated to occur through ADUs and SB 9 Urban Lot Splits and Urban Housing Developments. These development types are not required to observe setback requirements for the underlying zoning district. As a program of the Housing Element, a local SB 9 ordinance will be prepared to provide specific development standards for SB 9 projects. A standard residential subdivision in an R-1 district would not be constrained from achieving maximum density by setback requirements.

In R-3 multifamily residential zoning districts, front setback requirements are waived for attached housing types, including condominiums, apartments, row homes, and attached townhomes. These are the predominant types of multifamily housing produced in Fremont. Other setback requirements are minimal to allow for site circulation and utilities. In commercial districts and the Downtown and City Center Districts, setbacks are either not required or minimal to allow for site circulation and utilities.

Lot Size

In single-family residential zoning districts, the vast majority of residential development during the planning period are anticipated to occur through ADUs and SB 9 Urban Lot Splits and Urban Housing Developments. These development types are not required to observe minimum lot size requirements for the underlying zoning district. The lot size requirements in single family zones typically reflect the development pattern of the surrounding subdivision.

Minimum lot size requirements do not affect the development potential of multifamily developments which allow multiple units to be constructed on a single parcel.

Height

Height limitations are intended to allow projects to achieve the maximum allowable density, while also being responsive to community character. The districts that provide the highest densities for residential development also provide for the highest maximum heights, including the City Center District which has no maximum height, and the Downtown District which allows up to eight stories. The height limits in these districts are not a constraint to maximizing residential density. In other districts, height limits are reasonable to allow the maximum density and range of product types that are typical in these zones. Projects are also able to exceed height limits with density bonuses.

In Low Density residential zoning districts, the maximum height limits allow for the construction of typical two-story homes. In Low-Medium Density and Medium Density residential districts, the maximum building heights allow for the construction of a three-story townhomes and stacked flats, which are typical for these zoning districts. In Urban Density residential districts, the height limit is 52 feet, except that the height limit increases to 65 feet when within ½ mile of a transit station. As a program in the Housing Element, the 65 foot height limit would be extended to properties outside of ½ mile of a transit station to facilitate development to maximum density. Development projects within the Urban Density residential district during the current planning period were generally developed below maximum height limits: City Center Apartments (47 feet), Walnut Residences (48 feet), Laguna Commons (49 feet), Serra Apartments (60 feet), and Osgood Residences (60 feet). The Osgood Apartments South project was approved at 73 feet in height but utilized a density bonus to

achieve a density of 129 dwelling units per acre.

Height limits in commercial zoning districts range from 35 feet to 65 feet in height, which allows for three-story townhomes and stacked flats at the lower range to 5-6 story apartments or condominiums in the upper range. There is no maximum density in commercial zoning districts, which will encourage smaller units, which are more affordable by design, within the allowed height limits.

Design rules and development standards regarding massing at the street, solar access preservation, and upper floor setbacks restrict building heights at certain locations within the buildable area of a lot, but would not preclude a building from being designed in a manner that could achieve maximum height, size or density. The solar access preservation ordinance does not apply in areas of the City where intense residential development is anticipated, such as the Downtown, City Center, and Urban Residential districts.

Parking

The following table discusses parking requirements typically required for residential projects.

Table 5-4. Residential Parking Standards

Use	Required Resident Covered Spaces	Required Resident Covered/Uncovered	Required Guest Spaces
ADU and Junior ADU	n/a	None for studio units or JADUs, otherwise one per unit, except as exempted under State ADU law	n/a
Dwelling, single-family, two-family			
4 or fewer bedrooms	2 per unit	n/a	n/a
5 or more bedrooms	3 per unit	n/a	n/a
Multifamily Dwelling			
Studio and 1 bedroom units	1 per unit	n/a	0.5 per unit
2 or more bedroom units	1 per unit	0.5 per unit	0.5 per unit
Live/work units	1 per unit	n/a	1.5 per unit
Senior citizen housing	0.5 per unit	n/a	0.5 per unit
Efficiency apartment/SRO	0.5 per unit	n/a	0.5 per unit
Boardinghouse/rooming house	0.5 per unit	n/a	0.5 per unit
Mobile home park			
Mobile homes	n/a	2 per unit	1 per homes
Community building	n/a	n/a	1 per homes
Mixed-use developments	Base requirement for residential and commercial uses unless within special parking district. Also see Section 18.183.090.		

Within the City's Transit Oriented Development (TOD) Overlay District, the parking requirements for residential developments are reduced to a minimum of 1 space per unit, plus 0.25 spaces per unit for guest parking. A maximum of 1.5 spaces per unit plus .25 guest spaces per unit would also apply. For mixed use projects, the minimum parking requirement is reduced to one space per unit for the residential component and two spaces per unit for the commercial component. A maximum of one

space per unit would apply for the residential component and three spaces per unit for the commercial component. As a program of the Housing Element (Program 34), the City will review and modify parking requirements for small units (studios and one-bedroom units), and SROs as needed to ensure that excessive parking is not being required for these units and that production of small units are being incentivized.

Table 5-5. TOD Overlay Parking Requirements

Type of Use	Minimum Parking	Maximum Parking
Multifamily residential (per unit)	1 covered, plus 0.25 guest per unit	1 covered, 0.5 covered or uncovered plus 0.25 guest
Mixed-use developments:		
Multifamily residential component	1 covered per unit	1 covered per unit
Commercial component	2 per KSF	3 per KSF

In the Downtown and City Center zones, reduced parking requirements are also applicable.

Table 5-6. Downtown and City Center District Parking Standard

Zone	Minimum (Nonexclusive Use)	Minimum (Exclusive Use)	Maximum
Downtown	0.75 space/dwelling unit	1 space/dwelling unit	2 spaces/dwelling unit
CC-UO	0.75 space/dwelling unit	1 space/dwelling unit	2 spaces/dwelling unit
CC-UN	0.75 space/dwelling unit	1 space/dwelling unit	2 spaces/dwelling unit
CC-TN	0.50 space/dwelling unit	0.75 space/dwelling unit	1 space/dwelling unit

In the City's TOD Overlay Districts and much of the City Center District, minimum parking standards will be eliminated pursuant to the requirements of AB 2097 (2022), which specifies that cities may not apply minimum parking requirements on new development within ½ mile of a major transit stop, which includes the City's BART stations, the Centerville Train Station, and bus stops with routes with planned 15-minute headways). As a program of the Housing Element (Program 34), the City will adopt an ordinance removing minimum parking requirements in these locations.

Tandem parking configurations, and mechanical parking systems in the Zoning Ordinance provide additional flexibility in the manner in which parking is provided. The City Center Community Plan, Downtown Community Plan, Warm Springs/South Fremont Community Plan, and Irvington BART Station Area Plan allow for unbundled parking (separating the cost of a parking space from the rent of a residential unit), but standards for unbundled parking are not integrated into the zoning code. Program 34 will provide unbundled parking standards within the zoning code.

Several affordable housing developments were approved during the 2015-2023 planning period with parking ratios at or below one space per unit, which is the parking standards for multifamily residential development in a TOD Overlay District:

- Allied Housing, 34320 Fremont Boulevard (54 units, 35 parking spaces)
- Laguna Commons, 41152 Fremont Boulevard (64 units, 64 parking spaces)
- Osgood Apartments South, 41911 Osgood Road (100 units, 52 parking spaces)
- Osgood Apartments, 41829 Osgood Road (112 units, 72 parking spaces)

- Islander Motel Redevelopment, 4103 Mowry Avenue (128 units, 91 parking spaces)
- Irvington Senior Apartments, 2048 Irvington Avenue (90 units, 42 parking spaces)
- City Center Apartments, 38631 Fremont Boulevard (60 units, 30 parking spaces)

Parking standards were adjusted through the utilization of reduced parking standards for qualifying affordable housing projects located within one-half mile of a transit stop, consistent with AB 1763, which the City has codified in its Density Bonus Ordinance. Some affordable housing projects alternatively utilized waivers or concessions pursuant to the Density Bonus Ordinance in order to reduce parking. The frequency in which the parking standard was reduced suggests that parking standards for affordable housing developments may need to be readjusted. As a program in the Housing Element, the parking standards for affordable housing developments will be evaluated and adjusted where parking requirements are currently excessive. This will include an analysis of the City's standards for sharing parking spaces when multiple types of uses are proposed as part of a singular development.

Open Space

In the City's R-3 (multifamily residential) and commercial zones, the City requires a minimum of 500 square feet of common open space for a residential project. For each unit over five units, the City requires an additional 50 square feet. The minimum open space dimension for a common open space area is 15 feet. Small multifamily projects of 12 units or less are exempted from providing common open space if they exceed private open space area design requirements. Private open space requirements for multifamily projects are 60 square feet on balconies with a minimum interior dimension of six feet, and 100 square feet for private yards with a minimum interior dimension of 10 feet. In the Downtown District, no common open space is required. In the City Center District, zoning requires 15% open space for larger buildings over 20,000 square feet.

Several affordable housing developments (including Osgood Apartments South and Islander Motel) received reductions or waivers of private open space requirements during the 2015-2023 planning period, citing high costs for construction of balconies, and issues with long term maintenance. During a Developer Panel in support of the Housing Element, affordable housing builders similarly expressed that construction of balconies for private open space were problematic in affordable developments. The applicant for the Osgood Apartments South project estimated the additional cost for private balconies to be $10,000 per unit. As a program in the Housing Element (Program 46), private open space requirements be amended to provide flexibility to provide open space through other means. This adjustment will provide developers with an opportunity to provide open space in a more space-efficient and cost-effective manner, while still meeting open space needs of future residents.

Minimum Commercial Component and Floor Area Ratio in Commercial Zones

In several commercial zoning districts, residential uses are permitted as part of a mixed-use development with a substantial commercial component. A substantial commercial component must consist of at least 50 percent of the total ground floor building area that is located within 50 feet of a street frontage, with a minimum commercial space depth of 50 feet. The requirement was designed in consultation with economic development professionals as the minimum amount of commercial space necessary to allow for commercial viability. The remainder of the floor area permitted by zoning may be utilized for residential units, as follows:

Table 5-7. Floor Area Ratio (FAR) Standards in Commercial Districts

Zoning District	C-O	C-N	MX	TC-P	TC-T
Floor Area Ratio Maximum	0.6	0.6	1.25	1.25	1.25

SB 478, which became effective on January 1, 2022, prohibits local agencies from imposing a FAR standard that is less than 1.0 on a housing development project that consists of 3 to 7 units, or less than 1.25 on a housing development project that consists of 8 to 10 units. As a program in the Housing Element, the FAR for the C-O and C-N zoning districts will be modified to allow for the minimum FAR required by SB 478.

In TOD Overlay Districts, FAR maximums in commercial district are increased, facilitating additional residential development, as follows:

Table 5-8. Floor Area Ratio (FAR) Standards in TOD Overlay Districts

General Plan Land Use Designation	City Center	Town Center	Commercial-General
FAR Maximum	3	2.5	1.25
FAR Minimum	1.25	0.5	No minimum
Minimum Density (du/ac)	50	30	30
Maximum Density (du/ac)	None	None	None

Fremont's mixed use regulations (FMC Section 18.45.040) do not provide specificity regarding which street frontages require a commercial component in certain situations, such as when a development site is a through lot, or has street frontages on all sides. As a program in the Housing Element, the mixed use regulations will be amended to clarify requirements.

Design Guidelines

The City has various Design Guidelines and plans to promote high quality development and address the relationship of buildings to their surrounding context. They provide direction to ensure that development is safe, aesthetically pleasing, harmonious with its setting, respects privacy and views, and supports the goal of a more sustainable community. Some design guidelines apply Citywide, and address a certain type of development, such as:

- Citywide Design Guidelines (single-family residential, commercial component of mixed-use developments
- Small Lot Design Guidelines (small-lot single-family residential)
- Multifamily Residential Design Guidelines (multifamily residential, residential component of mixed-use developments)
- Community Character Element Place Types Manual (all development types)

Other Design Guidelines and plans apply to certain geographic areas of the City to promote a certain character of an area, including

- Niles Design Guidelines (applies to the core of the Niles Town Center)
- Mission San Jose Design Guidelines (applies to the core of the Mission San Jose Town Center)

- Irvington BART Station Area Plan (applies to Urban Residential and Town Center properties within the Irvington BART TOD Overlay District)
- Warm Springs/South Fremont Community Plan (applies to the Warm Springs Innovation District)
- City Center Community Plan (applies to the City Center District)
- Downtown Community Plan (applies to the Downtown District)

Recent State housing legislation has emphasized the use of objective design standards as the basis for reviewing housing projects. As a program of the Housing Element, the City will be updating Design Guidelines to ensure that design rules are sufficiently objective to be consistent with the requirements of the Housing Accountability Act, and to ensure that conflicts do not exist where multiple design guidelines apply.

Density Bonus Ordinance

State Density Bonus law (Government Code Section 65915-65918) facilitates the production of housing (particularly affordable housing) by requiring local jurisdictions to approve density bonuses for housing developments that contain specified percentages of affordable housing units or units restricted to occupancy by seniors. A density bonus is the allocation of development rights that allows a parcel to accommodate additional square footage or additional residential units beyond the maximum for which the parcel is zoned. Projects that qualify for a density bonus are also eligible for reduced parking standards and additional concessions, or incentives.

The City's Density Bonus Ordinance (FMC Chapter 18.165) is updated periodically to reflect changes in State Density Bonus law. A recent change to State Density Bonus law, under AB 2345, modified the percentages of affordable units required to qualify for a density bonus. As a program of the Housing Element, the City's Density Bonus Ordinance will be amended to comply with the most recent changes in State law.

Environmental Constraints

Development capacity in Fremont is limited by a number of environmental constraints.

Hill Area Development Limitations

One of Fremont's signature characteristics is its "Open Space Frame" consisting of the hills to the east and the bay wetlands to the west. Both the hills and the wetlands can also be viewed as constraints to development. Development in the hills has been limited by voter initiative, but capacity there was already minimal due to the steep slopes and risk of landslides.

Geologic Hazards

The Hayward Fault and several fault traces underlie Fremont, constraining housing development in these locations. The Hayward fault bisects Fremont and generally runs north and south through the City and could cause major damage and displacement due to its prominent location.

General Plan Safety Element Policy 10-2.2 prohibits the construction of structures for human occupancy within 50 feet of an identified main fault trace, unless a setback less than 50 feet is approved through site specific geologic studies and associated peer review.

Historic Resources

Although Fremont is a relatively young city, it has a rich human history dating back thousands of years. The City has been home to indigenous Native Americans, early European settlers and missionaries, post-Gold Rush era American settlers and farmers, and 20th Century innovators in the film industry and technology. Past inhabitants have left a legacy of structures, sites, and places that give context to contemporary Fremont, connect residents to their histories, and help influence the City's character and identity.

The City of Fremont has a local historic register for use in preservation planning, education, and implementation. The list is officially adopted by the City Council and contains 153 listed resources as of 2010. Some of the sites are also on the National Register of Historic Places and/or the California Register of Historic Resources. The City also contains potential register resources that may be identified as future additions to the Register. The City's Historic Resources Ordinance (FMC Chapter 18.175) and Historic Overlay District (HOD) Ordinance (FMC Chapter 18.135) require Historical Architectural Review for housing projects that affect historic resources and potential historic resources or are located within HODs to ensure conformance with the Secretary of the Interior's Standards for Treatment of Historic Resources and/or compatibility with the historic setting of an HOD. As a program of the Housing Element, objective design standards will be developed to allow for objective review of residential developments involving historic resources or historic districts.

Fire Hazard Areas

Fremont has locally designated Fire Hazard Severity Zones which recognize that these areas have higher exposure to wildfires and limited Fire Department access. The City's Fire Hazard Severity Zones are primarily located in the hillside areas east of Mission Boulevard and I-680, and designated Open Space or Hillside Residential in the General Plan. The Fire Hazard Severity Zone designation does not prohibit the construction of new housing. Instead, it requires that new construction utilizes fire-resistant materials to reduce fire hazards. Designing buildings to be more fire resistive may add to the overall cost of construction of new housing, but is not a significant constraint.

Infrastructure

Utilities

Utility capacity for development is not a significant constraint to residential development in Fremont. Utility service providers and the City's Engineering Division have designed infrastructure to accommodate the General Plan build-out and, as such, all development makes direct improvements or pays for necessary additional infrastructure with fees. These fees are relied upon to meet level of service standards established by the General Plan. Consequently, additional mitigation is rarely necessary. Services are provided by the following agencies:

- Water Service: Alameda County Water District (ACWD)
- Sanitary Sewers: Union Sanitary District (USD)
- Storm Drainage: Alameda County Public Works
- Alameda County Flood Control and Water Conservation District
- Telephone Service: AT&T and various wireless carriers
- Natural Gas/Electric: Pacific Gas and Electric Company

Because the development review process involves these agencies, the City coordinates, from the outset of an application to provide an opportunity for issues to be addressed and resolved early on. The City refers development applications to external agencies for their comment during the entitlement process.

Fremont's water services provider (ACWD) and sanitary sewer service provider (USD) grant priority for service allocations to proposed developments that include housing units affordable to lower-income households, consistent with the requirements of SB 1087 (Government Code Section 65589.7). This requirement is intended to improve the effectiveness of the law in facilitating housing development for lower-income families and workers. Per the requirements of SB 1087, the adopted Housing Element will be distributed to the City's water and sanitary sewer service providers upon adoption.

Street Dedication and Improvements

The City's Engineering Division requires that developers dedicate frontage to the City when it is required for the construction of public right-of-way improvements, such as roadways and sidewalks. The City requests the minimum dedication necessary to bring the adjacent street and sidewalk into conformance with the geometry called for within the General Plan. Developers are also required to fund and construct street improvements along the project street frontage, including curb, gutter, and sidewalk. A review of recent cost estimates provided by applicants determined the following market prices for typical street improvement work:

Table 5.8.5. Cost of Common Required Street Improvements

Type of Work	Cost per Unit	Unit
Demolition of existing sidewalk	$4.00	SF
Demolition of curb/gutter	$20.00	LF
Construction of new driveway	$7,000.00	Each
New curb and gutter	$20.00	LF
New sidewalk	$10.00	SF
Street trees	$500	Each

Data taken from cost estimates provided for two recent residential projects, Alder Residences (ENC2022-01012) and Osgood Apartments North (ENC2022-00484).

The total cost of constructing street improvements varies considerably depending on the type of improvement needed, circumstances of the site, market conditions for construction and the amount of street frontage. However, compared to other development costs, street improvement costs are rarely significant. For example, a lot with 80 feet of frontage would require $19,000 of street improvements to demolish existing improvements and construct a single driveway, curb, gutter, and sidewalk. As required by state law, the City exempts certain types of development, including accessory dwelling units, from street dedication and improvement requirements, to help facilitate their production.

Community Facilities Districts

Community facilities districts (CFDs) are special tax districts that allow the City to obtain additional funding for various infrastructure improvements. In some cities, CFDs are used similar to development impact fees in that new residential developments are required to enter a CFD in order to fund anticipated infrastructure maintenance. There are currently two CFDs within Fremont: one in Pacific Commons and another in Warm Springs. Both CFDs contain exclusively commercial and industrial parcels. The Housing Element does not require or anticipate the establishment of any additional CFDs

for residential development. The Housing Element does not propose any new parcel taxes or other taxes on residential development.

Building Codes

The State of California adopts a set of new construction codes every three years referred to as the California Building Standards Code. Building codes regulate construction to protect the public from unsafe conditions. The 2019 California Building Standards Code (2019 CBC) was adopted by the Fremont City Council on November 5, 2019. The 2019 CBC became effective on January 1, 2020. The City did not adopt any local amendments to the CBC that could have the potential to constrain housing production.

The 2022 Building Code was adopted by the City Council in November 2022 and will become effective at the end of 2022. In adopting the 2022 Building Code, the City Council did not adopt any additional local "reach codes" (amendments to the California Energy Code and Green Building Code). Fremont is currently preparing a Climate Action Plan, which will create a framework to lower greenhouse gas (GHG) emissions resulting from activity in the energy, water, waste, and transportation sectors, and sequester—or draw down—carbon dioxide and other GHGs from the atmosphere, so that by the year 2045, no new net greenhouse gases will be emitted. Local amendments to the CBC may be considered following adoption of the City's Climate Action Plan. As a program of the Housing Element, the adoption of local amendments to the CBC will include a cost-benefits analysis so that the City can appropriately balance sustainability and housing goals. No other local amendments to the 2022 Building Code were adopted which would add significant cost or constraints to housing production.

Building code standards are initially enforced through the City's building permit plan review process, which involves a detailed review of permit plans to ensure that building and safety codes are met, and accessibility requirements are integrated into the design. After permit issuance, the City's building inspection program identifies code deficiencies and construction issues prior to the issuance of a certificate of occupancy for a building. After a housing development is completed, building codes are enforced through the City's Code Enforcement Division. Code enforcement actions are typically complaint-driven. Code Enforcement staff prioritizes health and safety issues, works collaboratively with property owners to find solution to address violations, and helps to educate property owners on code requirements.

Affordable Housing Ordinance

On November 2, 2021, the City adopted a new Affordable Housing Ordinance in order to address the need for affordable housing related to market-rate housing production and to foster an adequate supply of housing in Fremont for all persons at all economic levels. The Affordable Housing Ordinance applies to residential developments that create two or more new net units. The Affordable Housing Ordinance was informed by a Residential Nexus Study and a Financial Feasibility Study to ensure that the requirements of the Affordable Housing Ordinance are not a constraint to housing.

The Affordable Housing Ordinance establishes a 15% inclusionary requirement consisting of 5% moderate-income units and 10% low-income units for for-sale residential developments and a 10% low-income inclusionary requirement for rental residential developments. The ordinance also includes provisions for alternative compliance for rental developments, allowing developments that include both for-sale and rental components fulfill their obligation under the ordinance by providing

affordable rental units. The ordinance requires 7.5% low-income units and 7.5% very low-income units for a total of 15% set-aside rental units.

An in-lieu fee option is available for developers to pay affordable housing fees instead of including on-site affordable units. The in-lieu fee will phase in from January 2022 through January 2024. A "hybrid" option is available where developers may produce on-site moderate-income units and submit a partial fee payment. Collection of affordable housing in-lieu fees from for-sale projects, instead of on-site construction of affordable housing, can be used to leverage outside funding sources for higher-density, 100 percent affordable projects, resulting in a greater number of affordable housing units that are affordable to households with extremely low, very low, and low incomes.

The current in-lieu fee is summarized below.

Table 5-9. Affordable Housing Fees, January 2022

Residential Projects		
For-Sale Housing Fees – In-lieu fee due when no inclusionary units are provided on-site	**Fee per SF[1]**	
	1/2/22 - 12/31/22	**Each Jan. 1 thereafter**
• For-sale units, except stacked flats	$35.00	$44.00
• Stacked flats	$27.00	$27.00
For-Sale Housing Fees – In-lieu fee due for low-income units when inclusionary moderate units are provided on-site[2]	**Fee per SF[2]**	
	1/2/22 - 12/31/22	**Each Jan. 1 thereafter**
• For-sale units, except stacked flats	$20.00	$29.00
• Stacked flats	$12.00	$12.00
For-Sale Housing Fees - In-lieu fee due for fractional moderate units when required moderate income units are provided on-site and applicant elects to pay an affordable housing in-lieu fee for a fractional moderate unit	**Fee per SF[3]**	
	1/2/22 - 12/31/22	**Each Jan. 1 thereafter**
• For-sale units, all, including stacked flats	Fractional unit/total affordable unit requirement x $15.00 x total habitable square footage in the project	Fractional unit/total affordable unit requirement x $15.00 x total habitable square footage in the project
For-Sale Housing Fees - In-lieu fee due for fractional low-income units when required low-income units are provided on-site and applicant elects to pay an affordable housing in-lieu fee for a fractional unit	**Fee per SF[4]**	
	1/2/22 - 12/31/22	**Each Jan. 1 thereafter**
• For-sale units, except stacked flats	Fractional unit/total affordable unit requirement x $20.00 x total habitable square footage in the project	Fractional unit/total affordable unit requirement x $29.00 x total habitable square footage in the project
• Stacked flats	Fractional unit/total affordable unit requirement x $12.00 x total habitable square footage in the project Fractional unit/total affordable unit requirement x $12.00 x total habitable square footage of the project	
Rental Housing Fees – In-lieu fee due when no inclusionary units are provided on-site	**Fee per SF[5]**	
	1/2/22 - 12/31/22	**Each Jan. 1 thereafter**

• Rental units over 700 SF	$17.50	$17.50
• Rental units up to 700 SF	$8.75	$8.75
• With underlying subdivision map	$27.00	$27.00
Residential for-sale projects deemed complete between June 7, 2015 and December 2, 2021	**Fee per SF**	
	1/2/22 - 12/31/22	**Each Jan. 1 thereafter**
• Attached units	$30.03	Rate Indexed[6]
• Detached units	$28.91	Rate Indexed[6]
Non-Residential Projects		
Land Use	**Fee per SF[6,7]**	
	1/2/22 - 12/31/22	**Each Jan. 1 thereafter**
Light industrial, manufacturing,[8] and warehouse	$4.64	Rate Indexed[6]
Hotel, office,[7] R&D, and Retail/Service	$9.27	Rate Indexed[6]

Notes: "SF" = Square Feet

1. Fee per habitable square foot of market-rate housing in for-sale residential projects in lieu of construction of affordable units on-site as permitted by Fremont Municipal Code Section 18.155.080(a).

2. Fee per habitable square foot of market-rate housing in for-sale residential projects to mitigate the cost of construction for low-income units as permitted by Fremont Municipal Code Section 18.155.080(b).

3. Fee per habitable square foot of market-rate housing in for-sale residential projects in lieu of construction of fractional moderate-income unit, as permitted by Fremont Municipal Code Section 18.155.080(b) and prescribed by 18.155.090(b).

4. Fee per habitable square foot of market-rate housing in for-sale residential projects in lieu of construction of fractional low-income unit, as permitted by Fremont Municipal Code Section 18.155.030(a)(4) and prescribed by 18.155.090(b).

5. Fee per habitable square foot of rental housing to mitigate the project's impact on the need for affordable housing.

6. Fees adjusted annually on January 1 of each year to reflect annual changes in construction costs as measured by the Engineering News Record McGraw-Hill Construction Weekly Building Cost Index for San Francisco but in no case higher than justified by the applicable Nexus Study.

7. Non-residential affordable housing fees will be collected on a per gross square foot basis exclusive of:

a. Parking garages, trash enclosures, equipment yards, external covered walkways, and atriums. Stairwells, elevator shafts, storage areas and similar spaces, however, shall count.

b. Additions to existing nonresidential buildings where the addition represents less than 1,000 square feet.

c. Supportive services within the non-residential portion of a mixed-use project that are linked to a supportive housing project.

d. Development for public use on property owned by and serving federal, state, or local government, including hospital, park, school, and utility district purposes.

e. Class A Office Space 8 within the Warm Springs Community Plan area only and Headquarter Office8 citywide shall be exempt from payment of this fee through January 1, 2020.

f. Advanced Manufacturing Space

8 shall only pay for the first 100,000 gross square feet of space within the building. 8. See definitions for special subtypes: "Advanced Manufacturing," Class A Office," and "Headquarter Offices."

Fees

Land development within the City of Fremont is subject to direct fees imposed by the City, fees collected by the City on behalf of another governmental agency, and/or fees imposed by another governmental agency within the City boundaries.

All fees imposed by the City on a residential development project are posted on the City's webpage and immediately updated when a change occurs.

Development Impact Fees

As allowed by State law, Fremont imposes fees on new development to support capital investments related to Parks, Transportation, and Civic Facilities. The City has five fee programs: two related to Parks (parkland acquisition, park facilities), one for Transportation (also known as the Traffic Impact Fee), and two for Civic Facilities (fire facilities/equipment, other city buildings/infrastructure/equipment).

In recognition of the great need to build affordable housing and missing middle housing in the community, Fremont's Development Impact Fee program provides for several notable exceptions to encourage and incentivize certain housing types. Fremont specifically exempts all Accessory Dwelling Units from development impact fees requirements, acknowledging the critical role they play in meeting Fremont's housing needs. Fremont also specifically allows deed-restricted affordable housing units to only pay Traffic, Parkland, and Park Facilities fees at 50% of the required rate.

In 2021, the City adopted an update to the City's Development Impact Fees, which includes five fee programs: two related to Parks (parkland acquisition, park facilities), one for Transportation (also known as the Traffic Impact Fee), and two for Civic Facilities (fire facilities/equipment, other city buildings/infrastructure/equipment). Impact fees pay for improvements that are absolutely necessary to maintain public safety and adequate circulation, as well as improvements that are related to quality of life, such as parks, community centers, etc. On the "necessary" side of the equation are the fire, traffic and circulation facilities required to mitigate a project's cumulative impacts. Without these fees, the City would not meet established levels of service set forth in the General Plan nor would identified environmental impacts be mitigated. On the "desired" or "quality of life" side of the equation are the capital (community center and other city facilities) as well as parkland and park facilities that the community desires. As part of the process for updating the City's development impact fees, the City reached out to development industry stakeholders, and held a meeting to receive feedback. The primary feedback received was support for the fee reduction for affordable housing projects and support for keeping the fees relatively consistent. The adopted update was consistent with that feedback.

Fremont's Development Impact Fees are a reflection of community values. Fremont residents consistently rate parks as a high priority. For example, as part of the General Plan update, the City conducted an on-line survey that asked residents, "Considering the following qualities or characteristics of the City of Fremont, indicate - -by priority- - what you feel the City should focus on during the General Plan Update." An overwhelming 85 percent of respondents identified Parks and Open Space as a high priority for the General Plan Update, the highest percentage for any of the categories.

Development impact fees collected for parkland helps the City to achieve the equity-based goal in its Parks and Recreation Master Plan (adopted in 2022) of placing a park within a 10-minute walk of every residence in the City.

The current Development Impact Fee rates for residential development were informed by a Comprehensive Development Impact Fee Study which ensured that rates would not be a constraint to housing. The current rates are provided below.

Table 5-10. Development Impact Fees, January 2022

Land Use	Capital Facilities	Fire Facilities	Traffic	Parkland	Park Facilities
0 bedrooms	$1,366	$256	$2,382	$4,859	$5,776
1 bedroom	$1,847	$347	$2,382	$7,529	$8,663
2 bedrooms	$2,743	$515	$2,661	$10,353	$12,129
3 bedrooms	$3,512	$659	$2,661	$12,678	$15,017
4 bedrooms	$4,120	$773	$4,051	$15,846	$18,482
Per additional bedroom > 4	$815	$153	See note	$2,921	$3,465

Note: Under the Traffic fee, residential units with more than four bedrooms pay the fee applicable to a 4-bedroom unit

Development Impact Fees are typically due upon issuance of building permits, but Fremont's Development Impact Fee program allows for affordable housing projects to enter into an agreement with the City to pay impact fees at the time of issuance of a certificate of occupancy or 18 months from the date of permit issuance, whichever occurs first. The City's deferral policy is designed to allow affordable housing developments with more flexibility to accommodate their typically complex funding structures and rigid schedules. In December 2022, the City Council directed staff to explore the feasibility for deferring payment of development impact fees for market rate housing developments as well.

Planning Fees

For entitlement applications, the City of Fremont charges applicants for actual costs for staff time according to individual hourly rates and service/material costs, such as public hearing notice publication and postage related to mailing public hearing notices. actual staff time spent processing a request. "Staff time" includes, but is not limited to, time spent reviewing application materials, site visits, responding by phone or in writing to inquiries from the applicant, the applicant's representatives, neighbors, and interested parties, attendance and participation at meetings and public hearings, preparation of staff reports and other correspondence. Processing charges are therefore proportional to the complexity of an individual application.

Staff collects a deposit at application submittal based on an estimate for each application type. Actual charges may be more or less than the deposit, depending on the complexity of the application and other factors. Current deposit amounts for application types that could apply to a residential development are below:

Table 5-11. Planning Application Deposits

Application Type	Deposit
Preliminary Review Procedure	$10,000
Rezoning	$10,000
Planned District (Preliminary Site Plan)	$12,500
Planned District (Precise Site Plan)	$12,500
General Plan Amendment	$16,000
Conditional Use Permit	$7,000
Zoning Administrator Permit	$4,600
Planned Unit Development	$3,840
Variance	$4,000
Modification of Zoning Standards	$7,500
Design Review (PC/ZA Hearing)	$20,000
Minor Design Review	$4,000
Limited Design Review	$3,120
Historical Architectural Review	$7,500
Preapproved ADU Review	$1,000
Tentative Tract Map	$20,000
Tentative Parcel Map	$10,000
Lot Line Adjustment	$4,300
Lot Combination	$5,000
Environmental Impact Assessment	$5,400

Building Permit Fees

Fees for building permits are charged based on construction valuation, as shown below.

Table 5-12. Building Permit Fee Schedule Valuation Table

Valuation	Building Permit Fee
$25,001 - $50,000	$664.47 for the first $25,000 plus $10.34 for each additional $1,000, or fraction thereof
$50,001 - $100,000	$664.47 for the first $25,000 plus $10.34 for each additional $1,000, or fraction thereof
$100,001 - $500,000	$664.47 for the first $25,000 plus $10.34 for each additional $1,000, or fraction thereof
$500,001 - $1,000,000	$664.47 for the first $25,000 plus $10.34 for each additional $1,000, or fraction thereof
$1,000,001+	$664.47 for the first $25,000 plus $10.34 for each additional $1,000, or fraction thereof

Other fees charged at building permit issuance include:

Table 5-13. Building Permit Fees

Fee	Fee
Community Planning Fee	15% of permit fee
Building Standard Administration Special Revolving Fund	$1-$25,000 valuation: $1 $25,001-$50,000 valuation: $1 $50,001-$75,000 valuation: $1 $75,001-$100,000 valuation: $1 Every $25,000 or fraction thereof above $100,000 valuation: Add $1
SMIP and Seismic Hazard Mapping Fee, Category 1	Construction 0 to 3 story: permit valuation x 0.00013
SMIP and Seismic Hazard Mapping Fee, Category 2	Construction over 3 stories: permit valuation x 0.00028
Construction Tax	New Single-Family Dwelling: $2,357 New Two-Family Dwelling: $2,017 Multiple Dwellings: $1,774 Additions: $0.76 per square foot added
Plan Check Fee	All occupancies: 100% of building permit fee Tract homes with repetitive plans: $114/lot Tract homes in hillside with repetitive plans: $138/lot Revisions to approved plans: $89.70/hour

Art District Fees

The City of Fremont has established Art District programs within the City Center, Downtown, Warm Springs, and Ardenwood Technology Park areas. These programs are intended to promote the arts, provide art education, and spur economic development by creating an attractive pedestrian environment. The current Art District Fee is set at $0.62 per gross square foot of new construction in all Art Districts. This fee is subject to an annual automatic escalation based on the Consumer Price Index (CPI). For construction projects with more than 100,000 square feet of gross area, the developer may choose to provide on-site artwork, of equivalent value, in lieu of paying up to 50% of the fee.

Fremont Unified School District Developer Fees

Developer fees are charged by the Fremont Unified School District (FUSD) for new residential construction, including additions of 500 sq. ft. The current rate is $4.79 (Level I) per square foot of residential development, effective May 23, 2022.

Alameda County Water District and Union Sanitary District Charges

The Alameda County Water District provides water services and the Union Sanitary District is responsible for the collection and treatment of wastewater, including the permitting and inspection of sanitary sewers outside of a building, for the tri-cities of Newark, Union City, and Fremont. The Alameda County Water District collects a per unit connection charge in order to allow a new unit to connect to a water main. The connection charge is currently $8,556 for a single-family home and $7,125 for a multifamily residence, which includes ADUs.

The Union Sanitary District collects a connection fee for new residential units as well. The connection charge is currently $9,331 for a single-family home, and $8,030 for a multifamily residence. ADUs are charged per-square foot capacity fee [$4.72/square foot].

Estimated Fees for Prototype Projects

The following are example fees for prototype residential development project types:

Table 5-14. Estimated Fees for Prototype Projects

	Single-Family Subdivision	JADU	ADU	Townhome	Apartment	Affordable Apartment
Project Characteristics						
Affordability	Market-rate	Market-rate	Market-rate	Market-rate	Market-rate	Affordable
Rent / Sale	Sale	Rent	Rent	Sale	Rent	Rent
# Units	10	1	1	8	100	100
Avg # Beds	3	0	1	3	2	1
Avg. Sq ft Per Unit	2500	500	800	1500	1200	700
Project Fees						
Affordable Housing[1]	$87,500	0	0	$420,000	$2,100,000	0
Development Impact Fees[2,3]	$345,270	0	0	$276,216	$2,840,100	$1,148,100
Planning Fees	$55,400	$3,120	$3,120	$50,000	$30,000	$30,000
Building Fees	$60,000	$4,000	$4,000	$60,000	$400,000	$400,000
Engineering Fees	$15,000	0	0	$15,000	$1,000	$1,000
FUSD	$102,000	0	$3,264	$48,960	$489,600	$285,600
ACWD[4]	$85,560	0	0	$57,000	$712,500	$712,500
USD	$93,310	$2,360	$3,776	$64,240	$803,000	$803,000
Total						
TOTAL PROJECT	**$1,631,54**	**$9,480**	**$14,160**	**$991,416**	**$7,376,200**	**$3,380,200**
TOTAL PER UNIT	**$163,154**	**$9,480**	**$14,160**	**$123,927**	**$73,762**	**$33,802**

Notes:
1. Assumed that all projects pay in-lieu fee
2. Fremont waives development impact fees for ADUs
3. Fremont reduces traffic, parkland acquisition and park facilities development impact fees by 50% for affordable housing units
4. Assumes that ADU projects do not install separate water lines. If any applicant choose to add a separate water line, there is a $8,556 connection fee

In the above table, the prototype JADU, ADU and affordable apartment projects paid the least amount in fees, while the single-family residential subdivision paid the most. This is consistent with the City's goals to incentivize the production of JADUs, ADUs, affordable housing developments, and small multifamily units to address the City's moderate-income and lower-income housing needs.

Permits and Processing

Processing and permit procedures can affect the time and cost of developing a residential project. Ineffective or unclear processing and permit procedures may also discourage a developer from taking on the risk of proposing a housing project altogether.

In an effort to become more efficient and sustainable, the Community Development Department has begun implementation on a number of key process changes to conduct more business electronically. This includes implementation of a new permit tracking system, and electronic plan review system. All development applications (including pre-application submittals, entitlement review, and building permits) are now submitted electronically, and plan reviewed electronically. These efforts were accelerated due to the COVID-19 pandemic and additional improvements are planned to refine these processes.

Pre-application Review

The City offers a Preliminary Review Procedure (PRP) application that allows an applicant to get early feedback from a multidisciplinary team of City staff on a proposed development, prior to submitting a formal application. This affords a developer flexibility to determine the feasibility of a project prior to preparing detailed plans and paying the more extensive entitlement. The City finds that many developers take advantage of this process to get early feedback and to reduce review time and costs in the future. An applicant typically receives comments back on a PRP application within about 30 days.

In addition to a PRP application, the City also has a process that allows developers to submit a Preliminary Application pursuant to SB 330 (the "Housing Crisis Act of 2019"). The Preliminary Application "freezes" applicable fees and development standards while application materials for a formal entitlement submittal are being prepared. The project remains vested unless the development proposal is significantly altered, or if the developer fails to submit a formal application within 180 days.

The City also has a General Plan Amendment Screening process, where General Plan Amendment proposals are presented to the Planning Commission and City Council for feedback prior to a formal application. The overall process is intended to screen and/or prioritize applications for review and identify applications the City Council has no interest in pursuing. Developers are therefore informed early on if a General Plan Amendment would not be supported. General Plan Amendment Screening requests are presented together twice a year to the Planning Commission and City Council. The General Plan Amendment Screening Process will expire at the end of 2022. The screening process benefits developers by providing early feedback from decision makers, but is also an additional procedural step which has the potential to extend development timelines and increase development costs.

Ministerial Review

The Zoning Code sets forth permitting requirements for residential development. All new residential developments require approval of a Design Review Permit, either a Ministerial Design Review Permit or a Discretionary Design Review Permit. The Design Review Permit may be considered in conjunction with other entitlement requests (e.g., a Conditional Use Permit, a Zoning Administrator Permit, Variance, Tentative Tract Map, Planned Unit Development, Rezoning, etc.) as needed. If multiple entitlement requests are needed for a development proposal, the City's zoning regulations allow for the different requests to be bundled together for review as a single consolidated item. For example, a Design Review Permit and a Tentative Tract Map for a residential condominium development could be reviewed and approved at the same time.

Some proposed housing projects are only subject to ministerial review, meaning they are approved at a staff level without exercising discretion. Accessory dwelling units, two-unit developments under SB 9, and new single-family homes (less than 7,500 square feet) are among the types of residential development types that can be approved at a staff level through a Ministerial Design Review permit when permitted by the underlying zoning district. For less complicated projects, such as ADUs, the City offers concurrent review, where zoning review and building permit review may be conducted at the same time. After an application is submitted, a multi-disciplinary review team would review the proposal for compliance with objective rules. If the application is determined not to satisfy an objective rule, a comment letter would be issued describing the issue that needs to be resolved and advising the applicant to submit corrected project plans. All review cycles are completed in less than 30-days. If all objective rules are satisfied, staff would approve the application without a public hearing via the issuance of a formal approval letter. If a building permit application was reviewed concurrently,

building permits could be issued at the same time as the zoning approval. If a building permit application was not processed concurrently, the applicant would apply for building permits following receipt of their approval letter.

Additionally, SB 35 (Government Code Section 65913.4) requires cities and counties to streamline review and approval of eligible affordable housing projects through a ministerial approval process, which exempts these projects from environmental review under the California Environmental Quality Act ("CEQA"). Review of an SB 35 application is limited an assessment of whether the proposal complies with adopted objective standards. SB 35 applies to cities and counties that have not made sufficient progress toward meeting their affordable housing goals for above-moderate and lower income levels as mandated by the State. Since Fremont has exceeded its above-moderate target, but not its lower income targets, during the current Housing Element cycle, development projects in Fremont are eligible for SB 35 streamlining when with 50% or more of the total number of units are restricted as affordable units. Prior to submitting an entitlement application under SB 35, an applicant must first submit a Preliminary Application to allow the opportunity for Native American Tribal consultation prior to the application. The City processes SB 35 applications ministerially in conformance with all requirements in SB 35, consistent with the ministerial approval process described above.

Per the requirements of AB 1397 (2017), a program (Program 44) is included in the Housing Element to create a by-right approval process for reused Housing Element sites that include at least 20 percent of units as affordable to lower-income households. The by-right process will provide for non-discretionary staff-level review and approval, consistent with the ministerial approval process described above.

Discretionary Review

Projects that are not eligible for Ministerial Design Review require Discretionary Design Review Permit approval at a public hearing, including single-family homes greater than 7,500 square feet, multifamily residential developments, mixed-use developments, and residential projects that involve some kind of discretionary entitlement. Other types of discretionary entitlements that may be part of a housing development proposal include:

- **Conditional Use Permit.** A process for reviewing land uses which may be compatible with the zoning district, but whose effect on the site and surroundings cannot be determined before being proposed for a specific location. Such uses may be suitable in a zoning district only in specific locations or only if designed in a particular manner or subject to specific conditions. The approval authority for a Conditional Use Permit is the Planning Commission.

- **Zoning Administrator Permit.** A process with the same purpose as a Conditional Use Permit, but where the approval authority is the City's Zoning Administrator.

- **Rezoning or General Plan Amendment.** A legislative change to the zoning district and/or General Plan Land Use designation of a site.

- **Planned District.** A rezoning to a Planned District with custom development standards with the purpose of encouraging and providing a means for effectuating desirable development, redevelopment, rehabilitation and conservation in the city.

- **Planned Unit Development.** A permit to allow variations to development standards for small infill development projects involving five or fewer residential units wherein superior and context sensitive design solutions offset any variations to the development standards in the established zoning district.

- **Variance or Modification of Zoning Standards.** Processes which allow deviation from development standards.

- **Tentative Tract Map.** Subdivision of a parcel into five or more parcels.

- **Tentative Parcel Map.** Subdivision of a parcel into four or fewer parcels.

Findings for approval generally include conformity with General Plan and zoning/development standards as well as basic public health, safety and general welfare concerns. Program 18 in the Housing Element commits the City to refining the findings for discretionary design review for housing developments to reflect the objective nature of reviewing development applications for new housing. The approval authority applies discretion in considering the proposal, except that the Housing Accountability Act (HAA) (Government Code Section 65589.5) does not allow for the approval authority to deny, reduce the density of, or make infeasible housing development projects, emergency shelters, or farmworker housing that are consistent with objective local development standards. In staff reports for development proposals subject to the HAA, language is provided which defines the limits to the approval authority's discretion under the HAA. Although the approval authority does have the ability to deny a housing application subject to the HAA based on health and safety findings, the City has never denied an application subject to the HAA based on health and safety grounds. Although the City's discretion over development applications subject to the HAA are very limited, the City values public hearings to better inform the public about development proposals and to provide a greater level of transparency in the approval process._

The Zoning Administrator (a staff person) is the approval authority for a Discretionary Design Review application, except:

- The Planning Commission is the approval authority when an application for design review is submitted in conjunction with another permit where the Planning Commission is the approval authority (e.g., a Tentative Tract Map, Conditional Use Permit).

- The Historical Architectural Review Board is the approval authority (or will make a recommendation to the approval authority) in instances where a development project is located within a historical overlay district (HOD) or when a project may affect a Historic Resource or Potential Historic Resource. The Historical Architectural Review Board would review conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties, and/or HOD Design Guidelines, as applicable.

- Any Design Review application that is submitted in conjunction with a legislative action (e.g., a Planned District, Rezoning, General Plan Amendment), would be subject to review and approval by the City Council.

Prior to review at a public hearing, discretionary applications are reviewed by a multi-disciplinary team of City staff against applicable policies and standards. A proposal may require multiple review cycles depending on whether the application is complete and whether the proposal

adequately addresses requirements.

Unlike ministerial applications, discretionary actions may require environmental review pursuant to the requirements of the California Environmental Quality Act (CEQA). Depending on specific individual circumstances, a housing proposal may require preparation of a Negative Declaration (ND), Mitigated Negative Declaration (MND), or an Environmental Impact Report (EIR) to analyze potential environmental impacts.

Environmental review is a major determining factor for the length of time needed to process a development application. When a project is not subject to environmental review, the processing time can be significantly shortened. When a project is subject to environmental review, additional time may be required to complete technical studies, evaluate the applicability of exemptions, and potentially prepare an Initial Study document. Environmental determinations are also subject to judicial challenge. Projects subject to CEQA may be additionally held up by lawsuits challenging the adequacy of environmental documents. Within the past planning period, there was one CEQA lawsuit filed against a housing project within the City of Fremont. This indicates the slight, but real, possibility of such challenges and associated delays. The City utilizes streamlining provisions under CEQA to expedite the review of housing projects wherever feasible.

Typical processing times are shown below. Review times can vary dramatically depending on the varying disciplines involved with a project review, the complexity of a project, and the level of preparedness and responsiveness of a project applicant. The timelines below account for multiple review cycles of up to 30-days, and a 1-2 months of lead time for public hearings to allow for the preparation of a staff report and public noticing. The Zoning Administrator, Historical Architectural Review Board and Planning Commission typically hold one regularly scheduled meeting per month. The City Council typically holds three regular meetings per month. Actions of the Zoning Administrator, Historical Architectural Review Board and Planning Commission may be appealed within 10 days of a decision. If an appeal is filed, a new hearing will be held, which would extend the approval timeline by 2-3 months.

Table 5-15. Typical Timelines for Approval or Permit Types

Application Type	Typical Processing Time (weeks)	Approval Body
Zoning Administrator Permit	4-8	Zoning Administrator
Conditional Use Permit	12-24	Planning Commission
Planned District (Preliminary Site Plan)	20-40	City Council
Planned District (Precise Site Plan)	20-40	City Council
Zone Change	20-40	City Council
General Plan Amendment	20-40	City Council
Planned Unit Development	12-24	Planning Commission
Modification of Zoning Standards	12-24	Planning Commission
Variance	12-24	Planning Commission
Design Review (PC/ZA Hearing)	12-24	Planning Commission/Zoning Administrator
Minor Design Review (e,g., new SFD)	4-8	Staff
Limited Design Review (e.g., new ADU)	4-8	Staff
Tentative Tract Map	12-24	Planning Commission

Application Type	Typical Processing Time (weeks)	Approval Body
Tentative Parcel Map	4-8	Planning Manager
Lot Line Adjustment	4-8	Planning Manager
Lot Combination	4-8	Planning Manager
Environmental Impact Report	36-52	Concurrent with entitlements
Initial Study	16-24	Concurrent with entitlements

Building Permit Review

Similar to entitlement reviews and PRPs, building permit applications are reviewed through a multidisciplinary team-based process, which allows the City to provide a coordinated and thorough response to an applicant regarding potential project issues. Once an application is received, staff from various departments/divisions, i.e. Fire, Traffic, Planning, Public Works/Engineering, Environmental Services coordinate to review plans and discuss issues and solutions. Comments and plan revisions are coordinated through the Team lead. Having one contact person or liaison reduces the confusion for the applicant and avoids conflicting information.

Each cycle of team-based review is typically completed within thirty days. The timeline to complete the review process and receive building permits is typically driven by the number of review cycles. Simple ADUs and single-family homes may receive approval within one or two cycles, whereas more complex multifamily residential buildings often require four or more cycles of review.

Review of Housing Developments on Fremont BART Parking Lot Site

Although most housing that will be developed during the 2023-2031 planning period will be on private property, the Housing Element sites inventory identifies public land that is suitable for housing as well, including existing parking area at the Fremont BART Station. Land at the Fremont BART Station has been in Fremont's Housing Element Sites Inventory for multiple cycles, and the underlying City Center Land Use Designation allows for housing development. Since the early 1990s, BART has worked in partnership with cities and counties to develop BART-owned property with housing to further BART's Board-adopted TOD goals.

BART's TOD Workplan states that BART will prioritize their limited resources towards developing housing on sites with clear local support. Although Fremont has adopted a Community Plan and zoning which allows for high density residential development consistent with BART's TOD goals, Fremont has not taken proactive steps to signal that the City has an interest in encouraging development of affordable housing on BART land or taken steps to partner with BART on a plan for the site. As described under Program 63 of the Housing Element, Fremont will proactively engage with BART to identify and reduce barriers to construction of affordable housing on the Fremont BART site. The City will actively pursue development interest in the parcels, including soliciting developer input on the feasibility of developing affordable housing on the Fremont BART site.