



## **Comparison of San Diego's ADU Regulations to State Law**

July 5, 2021

Neighbors For A Better San Diego has prepared this report to bring attention to the significant differences between what is allowed under the Accessory Dwelling Unit (ADU) ordinance that San Diego approved in October 2020 and what was required by California state law. After staff reports underrepresented the extent to which the ordinance exceeded state law, the ordinance was presented to, and approved by, the Council during the month prior to a significant national election, through a process that avoided the extensive public notices and reviews that it warranted. This lack of full presentation and discussion has led to both the public and public officials being unaware of the full scope of this ordinance. Further, because the ADU ordinance was presented as just implementing state law, no information has been provided to the public regarding the true underlying policy objectives, with the appropriate accompanying analysis to justify those objectives.

If the code changes that were adopted were not what was understood by the then Mayor and Council, then we recommend that the city adopt a moratorium on these changes to allow proper public input and full consideration by the Council, with subsequent revision of the code to bring it into conformity with the intent of the state ADU law.

It should be underscored that because it removed limits on the number of units allowed on a single-family zoned property, the ordinance effectively upzoned San Diego's single-family zoned neighborhoods (RS-1-7) into very high multi-family zones (roughly equivalent to RM-3-9). Specifically, a minimum of five residences are now permitted on any single-family zoned property in San Diego, and potentially several times that within designated Transit Priority Areas. For the benefit of the public and policy makers who have to deal with the ramifications of these changes, this effective upzoning should have been subjected to the full public review and comment process normally provided for a significant zoning change, not just bundled with a large package of other code changes.

### **Overview of San Diego's ADU Ordinance**

The City's October 2020 zoning changes were not just an implementation of state law. Instead, they extended ADU development well beyond what was required or intended by the state. State law requires only that cities allow property owners to build 1 ADU and/or 1 JADU on a single-family zoned property, with rear and side setbacks no more than four feet and height limits no less than 16 feet. If San Diego had adopted these limits, the resulting structures would

be unobtrusive, and the additional cars and infrastructure demand would be readily absorbed into existing single-family zoned neighborhoods.

Instead, San Diego extended state law in many critical and deleterious ways (see Appendix A for full detail):

- The number of ADUs allowed outside transit priority areas (TPAs) is three, plus one JADU and the single-family home, for a total of five residences/addresses.
- The number of ADUs allowed inside TPAs is only limited by what can fit on a single-family lot, within the floor area ratio (FAR) limitations. This encourages unwieldy and unsightly building configurations. Also, it's one thing to add a little bit of density with marginal impacts on the sewers and roads of older neighborhoods, as the state ADU law does. It's another to expect the population of neighborhoods to double, triple or quadruple without significant infrastructure impacts.
- Building heights are allowed up to 30 feet, which means that three-story "granny towers" can be built overlooking single and two-story homes.
- Setbacks have been eliminated on rear and side property lines, even in high fire hazard zones. This danger is avoidable because state law allows local jurisdictions to exclude ADU development in certain areas on the basis of public safety. San Diego neglected to acknowledge or take advantage of this commonsense hazard reduction.
- Front yards can be turned into parking lots to accommodate the added cars, even in so-called Transit Priority Areas (TPAs). This is a tacit admission by San Diego planners that their effort to persuade residents to abandon their cars and adopt mass transit has been unsuccessful.
- Developer fees are waived for all ADUs on a property, whereas the state requirement is to waive fees for only one ADU (up to 750 square foot). In conjunction with the Council's override of Prop H, this starves the city of necessary revenue for infrastructure (parks, libraries, roads, water and sewers) to support additional residents. Further, while proponents tout density as promoting climate action and livability, waiving fees on neighborhood ADUs, while requiring these fees on transit corridor projects, produces the opposite result, because the cost disadvantage put upon transit corridor projects draws development away from the corridors themselves.

To understand the growing backlash against the city's regulations as new projects become visible in neighborhoods, it is helpful to start with the oft-promoted intention of the state law, which was to provide a homeowner an opportunity to add a small unit in their backyard or via a garage conversion, either to house a family member or as a small rental. The idea was that these units, euphemistically labeled "granny flats," would be small in scale, consistent with the existing house, and minimally impactful on infrastructure.

Unfortunately, the City of San Diego failed to appreciate and respect the limited but acceptable scale of the state law. When San Diego eliminated setbacks and allowed ADUs up to 30 feet (three stories), these buildings became highly visible and intrusive upon neighboring properties.

“Granny flats” became “granny towers.” Further, when the city went from the state’s single ADU allowance to unlimited bonus ADUs, the justification for bypassing CEQA no longer applied. ADUs were never meant to be more than a small contributor to a city’s housing stock, not a primary contributor. Yet what started as a way to make home ownership more affordable to residents and their relatives has become a purported solution for affordable housing and mass transit adoption, with low returns relative to real solutions to both of these problems. If anything, would-be homeowners are being driven out of the market as they are outbid by investors who can afford to redevelop and realize the substantial rents that these multi-unit apartments generate.

Despite our single-family zoned neighborhoods being opened up to these multi-unit ADU projects, the city has not increased staff to properly vet the compliance of these developments with even the few remaining regulations that govern their construction. In fact, city staff is telling neighbors that they are responsible for identifying and monitoring these massive construction projects, and that it is their responsibility to alert the city about violations. While that is concerning enough, the San Diego ADU/JADU zoning laws are so confusing and poorly written that the Development Services Department (DSD) provided inconsistent answers to questions from NFABSD about what is permitted under the code, and it took multiple interviews with DSD employees to sort out what is permitted. This leads to the obvious concern that the code might not be applied uniformly.

## **ABOUT US**

Neighbors For A Better San Diego is a grassroots organization that has been formed to protect neighborhoods from the development of apartment buildings in the backyards of single-family homes. By bringing homeowners back into the discussion of urban development, we seek the creation of policies that benefit homeowners, renters, small businesses, and other stakeholders.

For more information, visit: [neighborsforabettersandiego.org](http://neighborsforabettersandiego.org) or email: [Better4SD@gmail.com](mailto:Better4SD@gmail.com)

## **DISCLAIMER**

**Neighbors For A Better San Diego is a group of concerned citizens, and the information in this document is provided for purposes of policy discussion only and should not be construed as giving legal advice on ADU construction or any other legal matters. We recommend that you contact a real estate attorney if you have any questions.**

### APPENDIX A: Detailed Analysis of San Diego's ADU Ordinance

Based on numerous emails and interviews with the Development Services Department, Neighbors For A Better San Diego has put together the following summary comparison of the requirements that the State adopted and what San Diego permits:

San Diego	State of California
Unlimited ADUs in TPA, 3 outside of TPA (60% of San Diego residents live in TPAs)	1 ADU
Bonus ADUs (pairing of market rate and affordable)	No mention of Bonus ADUs in CA law
Waives all developer fees (DIF, RTCIP & GPMF)* on all ADUs of any size	Only waives fees on single ADU if less than 750 sf
Allows heights of 30 feet (This is enough for a three-story building)	16 feet
Zero Side/Rear Setbacks	4 Foot Side/Rear Setbacks
Angled planes eliminated for side and rear yards since no setbacks, thus allowing for shading of neighbors' homes, yards, and solar panels	N/A
Additional curb cuts for allowed front yard setback parking may eliminate trees/diminish urban canopy	N/A
Eliminates any ADU parking requirements (within or outside TPA), but parking spaces can be added to front yard setback.	Eliminates ADU parking requirement within one-half mile of transit
Defines transit area as one-half mile from major transit stop – Affects number of ADUs allowed	CA ADU regulations don't discriminate with regard to TPA
Did not limit areas where ADUs are permitted based on state-allowed criteria: adequacy of water and sewer; impacts on traffic flow and public safety	Allows areas where ADUs are permitted to be limited based on adequacy of water and sewer and impacts on traffic flow and public safety
ADUs allowed in Very High Fire Hazard Severity Zones	Allows areas to be restricted from ADU development based on public safety concerns, including "severe fire hazard areas"
1 JADU	1 JADU
JADU can be within a single-family dwelling, an attached or detached garage, or an attached or detached ADU	JADU must be attached to main house or attached garage

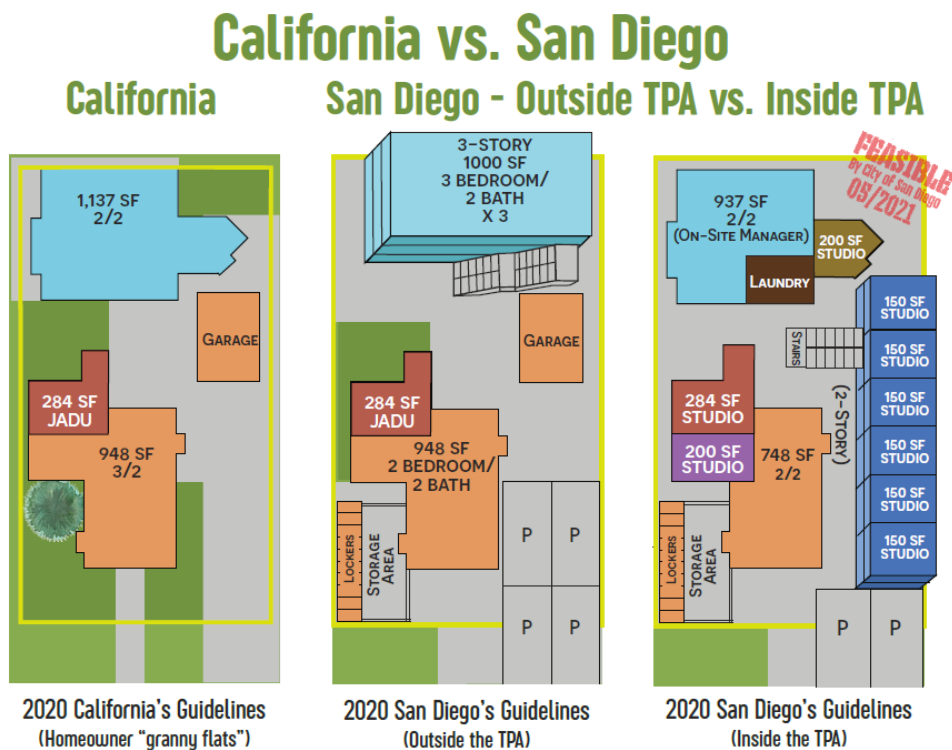
\* Development Impact Fees (DIF), Regional Transportation Congestion Improvement Program Fees (RTCIP), General Plan Maintenance Fee (GPMF)

As can be seen from comparison with the state, the city supersized the state's program by allowing unlimited ADUs in Transit Priority Areas (TPAs) and two extra ADUs (for a total of 3) in non-TPA areas, loosening height and setback requirements to make them very visible from the street. To better visualize what these ADU projects might look like on a single-family zoned

property, we have constructed examples of what would be permitted inside and outside a TPA, which are presented below.

**Examples of Allowed Projects Inside and Outside a Transit Priority Area (TPA)**

The graphic below, which is based on an actual property in San Diego, illustrates what can be built in San Diego in comparison to elsewhere in California. On the left is what would be allowed under the state code. The middle drawing shows the single JADU and 3 ADUs (1 by right + 1 affordable + 1 bonus) that can be built anywhere in San Diego. Finally, the drawing on the right shows the substantially larger number of ADUs that can be built inside a TPA. This 16 ADU development has been vetted with the San Diego Development Services Department to make sure that we are not misrepresenting what the San Diego code allows.



## **Number of ADUs Allowed on a Single-Family Home Property**

A common question about ADUs, and surprisingly the one that is most difficult to answer is: How many ADUs can be put on a single-family zoned property? The answer to this question first depends on whether the property is inside or outside of a Transit Priority Area (TPA). (See below for a map of San Diego's TPAs.)

	<b>Inside TPA</b>	<b>Outside TPA</b>	<b>Notes</b>
<b>Number of JADUs allowed</b>	1 141.0302(a)(1)	1 141.0302(a)(1)	Property owner, shareholder or limited partner must live on premises.
<b>Minimum number of ADUs allowed</b>	1 141.0302(b)(2)(B) 141.0302(b)(2)(D)	1 141.0302(b)(2)(B) 141.0302(b)(2)(D)	Permitted in all residential zones 141.0302(b)(2)(A). (See Note 3 below.)
<b>Maximum number of affordable ADUs allowed</b>	N (No limit up to FAR capacity) 141.0302(b)(2)(G) 141.0302(b)(2)(G)(i)	1 141.0302(b)(2)(G) 141.0302(b)(2)(G)(ii)	
<b>Number of bonus ADUs allowed</b>	N (No limit up to FAR capacity) 141.0302(b)(2)(G) 141.0302(b)(2)(G)(i)	1 141.0302(b)(2)(G) 141.0302(b)(2)(G)(ii)	No requirement that square footage of affordable and market rate units have to match
<b>Total JADUs</b>	1	1	1
<b>Maximum ADUs</b>	2N+1 (1 by-right ADU + N affordable + N bonus)	3 (1 by-right + 1 affordable + 1 bonus)	State law only provides for 1 ADU
<b>Total Possible Residences on a Single-Family Zoned Property</b>	2N+3	5	3

### **Additional Notes**

1. State law is 1 ADU and 1 JADU. The state does not define different codes for TPAs and non-TPAs, nor does it have provisions for affordable bonuses.
2. This chart is for single family properties only. Different allowances apply to multi-family properties.
3. Floor Area Ratio (FAR) rules limit the number of ADUs that can be built on a lot, with the exception that a single ADU can be built with a maximum of 800 sf regardless of FAR. 141.0302(b)(2)(D) is a specification of this single ADU and should not be construed as permitting an additional ADU.
4. According to the City of San Diego's TPA map, the majority of residents (60%) live within Transit Priority Areas (TPAs).
5. The density bonuses can be satisfied using an affordability tier of 30% of 110% of Area Median Income (AMI), which is equivalent to rents in the range of \$2,000 to \$3,000 per month. In many areas in San Diego, this is effectively market rate.

## **San Diego Transit Priority Area (TPA) Map**

An important determinant of what can be built on a single-family zoned property in San Diego is whether the property is located within a Transit Priority Area (TPA).

In accordance with SB 743, “Transit priority areas” are defined as “an area within one-half mile of a major transit stop that is existing or planned, if the planned stop is scheduled to be completed within the planning horizon included in a Transportation Improvement Program adopted pursuant to Section 450.216 or 450.322 of Title 23 of the Code of Federal Regulations.”

San Diego’s Transit Priority Map is shown below. Roughly 60% of San Diego residents live in TPAs and are affected by the unlimited bonus ADU provisions. The remaining 40% of residents who live outside of TPAs are subject to 2 bonus ADUs (one market rate and one affordable), for a total of 3 ADUs on a single-family zoned property. These would be in addition to a Junior Accessory Dwelling Unit (JADU) and the single-family home, which in total allows five habitable units to be built on a single-family zoned lot outside a TPA.

