



June 21, 2021

RE: Clarification of San Diego's ADU regulations in comparison to State law

Neighbors For A Better San Diego submits this letter to bring attention to the continued misunderstanding of the scope of the Accessory Dwelling Unit (ADU) ordinance that was passed by the City Council last October and which went into effect in November 2020. In particular, we want to address the significant differences between what is allowed under that ordinance and what was required by state law. Because staff reports did not alert the Council to the extent to which the ordinance exceeded state law, the ordinance was presented to – and approved by – the Council as a consent agenda item. This lack of full presentation and discussion has led to both the public and public officials being unaware of the full ramifications of this ordinance. Given the significant burdens that the ordinance imposes on San Diego's single-family zoned neighborhoods, the mischaracterization of its scope needs to be corrected.

It is especially troubling that our public officials are unaware of the scope of the changes and how much they differ from state law. This state of confusion includes Planning Commission and staff, as evidenced by an exchange that took place between Commissioner Kelly Moden and Program Manager Tait Galloway during the June 10th Planning Commission meeting (see Attachment A). In this exchange, Commissioner Moden asserted that San Diego's ADU ordinance was not “necessarily a San Diego policy but really a state policy that has to be adopted”, which Mr. Galloway incorrectly affirmed. The exchange ended with Commissioner Moden stating: “Okay. So, I want the community to be aware of that.”

While we share the sentiment that the community should be made aware of the congruences and differences between state and city ADU regulations, it is just as important that the Planning Commission and staff know. The above statements demonstrate that the Planning Commission and staff either aren't aware of what the differences are between state and San Diego law or don't comprehend their significance. It is crucial to correct the record regardless.

The City's October 2020 zoning changes were not just an implementation of state law, 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 less than four feet and height limits no less than 16 feet. If San Diego had adopted these regulations, the resulting structures would be unobtrusive, and the additional cars and infrastructure demand would be readily absorbed into existing single-family zoned neighborhoods.

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Instead, San Diego extended state law in many critical and deleterious ways:

- The number of ADUs allowed in TPA zones is only limited by what can fit on a single-family lot (within FAR). This encourages unwieldy and unsightly building configurations. It's one thing to add a little bit of density with marginal impacts on the sewers and roads of older neighborhoods. It's another to expect the population of neighborhoods to double or triple without 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 is a failure.
- All developer fees are waived for ADUs, whereas the state requirement is to waive fees for one ADU less than 750 square foot. 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 maintaining them 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 avoid any further confusion about the scope of what's permitted, we have provided a full analysis of the October 2020 City of San Diego ordinance in Attachment B, along with an example of what can be built under the new ordinance. This example has been developed after weeks of Q&A with the Development Services Department and represent the most thorough analysis of this ordinance we have seen to date.

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 through a garage conversion, either to house a family member or as a small rental. (See example in Attachment B.) The idea was that these units, euphemistically labeled "granny flats," would be small in scale, generally not visible from the street, minimally impactful on infrastructure, and hence could be permitted ministerially instead of requiring the full review that any other project would require.

Unfortunately, the City of San Diego failed to appreciate the limited but acceptable scale of the state law. When it eliminated setbacks and allowed buildings up to 30 feet (three stories), the

poor architecture of these buildings became very visible. “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 and even negative returns relative to real solutions to both of these problems.

At the same time that our single-family zoned neighborhoods are being opened up to these multi-unit ADU projects, which are not subject to review and comment by community planning groups or the Planning Commission, the city has not increased staff to properly vet the compliance of these developers with even the few remaining regulations that govern their construction.

In fact, city staff is now 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.

The City’s ordinance was approved as a result of misleading staff reports that asserted that San Diego was simply implementing state law. If the purpose of the ordinance was to have ADUs become the major source of affordable housing for San Diego or if the purpose was for ADUs to address climate change, then these purposes should have been stated in the staff reports, with a full economic and environmental analysis of how those outcomes would have resulted from enactment of the ordinance. Also, by effectively removing limits on the number of units allowed on a single-family zoned property, the ordinance effectively upzoned all San Diego single-family zoned neighborhoods (RS-1-7) into very high multi-family zones (roughly equivalent to RM-3-9). This upzoning should have been subjected to the full public review and comment process, NOT just slipped into a consent agenda.

To correct the misconceptions about the City’s ADU code, Neighbors For A Better San Diego urgently requests that the following actions be taken:

- Full disclosure of the scope of the October 2020 ordinance. This must include a clarification that San Diego was not just implementing state law in drafting the ordinance, but rather went well beyond the original scope and intent of state law. If there are policy reasons for these extensions, the Mayor and Council must have an open, public discussion with San Diego residents and provide solid evidence that upzoning single-family neighborhoods is the only way to achieve these objectives.
- Allow Neighbors For A Better San Diego to make a full presentation of the ordinance as an agenda item in a future Planning Commission meeting. Given that it has taken Neighbors For A Better San Diego weeks of Q&A with the Development Services Department to clarify what the ordinance exactly allows, often with conflicting answers, hopefully our non-partisan analysis will help to sharpen staff training.

- Have Staff undertake a more fulsome and transparent analysis of the ADU ordinance and its role in City planning, and include the input of homeowners in revising the ordinance to be appropriate to the scale of neighborhoods and the density that they can reasonably be expected to absorb.

Public trust is crucial to city planning. San Diego's ADU ordinance was passed as a consent item without public comment or even Council discussion, and, in particular, without ample time for input from affected homeowners, either directly or through their planning groups. It was then misleadingly promoted to the public and the media as "granny flats". In attempting to hide the scope and intent of ADU policy, the city is creating an opposition to future projects that will eventually result in less housing being built, not more. The City needs to be transparent with San Diegans regarding long-term housing objectives, both for ADUs and for other types of development, and bring all residents into the dialog to determine San Diego's future.

Respectfully,

Geoffrey Hueter, Ph.D.
Chair
Neighbors For A Better San Diego

ATTACHMENTS

Attachment A: Transcription from June 10, 2021 Planning Commission Meeting

Attachment B: Detailed Analysis of San Diego's ADU Ordinance

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. For more information, visit: neighborsforabetersandiego.org

**ATTACHMENT A: Transcription from June 10, 2021 Planning Commission Discussion About
ADU Concerns from the Community**

The motivating reason for this letter is the following exchange that took place during the Planning Commission meeting on June 10, 2021. The exchange took place between Planning Commissioner Kelly Moden and Tait Galloway, Program Manager, Community Planning & Implementation.

The transcription is taken from the Planning Commission video of the meeting, which can be found here: <https://www.youtube.com/watch?v=703WgyipjeU&t=6535s>

The exchange takes place approximately 1:50:10 of the meeting in question.

Commissioner Moden:

“There was a community comment via email about the ADUs and the Junior ADU concerns and I think I want staff to chime in on this, but that’s largely coming down from the state - that’s not a City of San Diego thing. And I hear the concerns about adding density in low density neighborhoods – single family homes – but that’s really a function of state law, and, correct me if I am wrong, Staff, but I don’t feel that this is necessarily a San Diego policy but really a state policy that has to be adopted.”

Tait Galloway:

“Our implementation – That’s correct. Our implementation of the Junior and the Accessory Dwelling Unit regulations was implementation of state law.”

Commissioner Moden:

“Okay. So, I want the community to be aware of that.”

Attachment B: 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' (This is enough for a three-story building) | 16' |
| Zero Side/Rear Setbacks | 4' 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 ½ mile of transit |
| Defines transit area as ½ 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 |

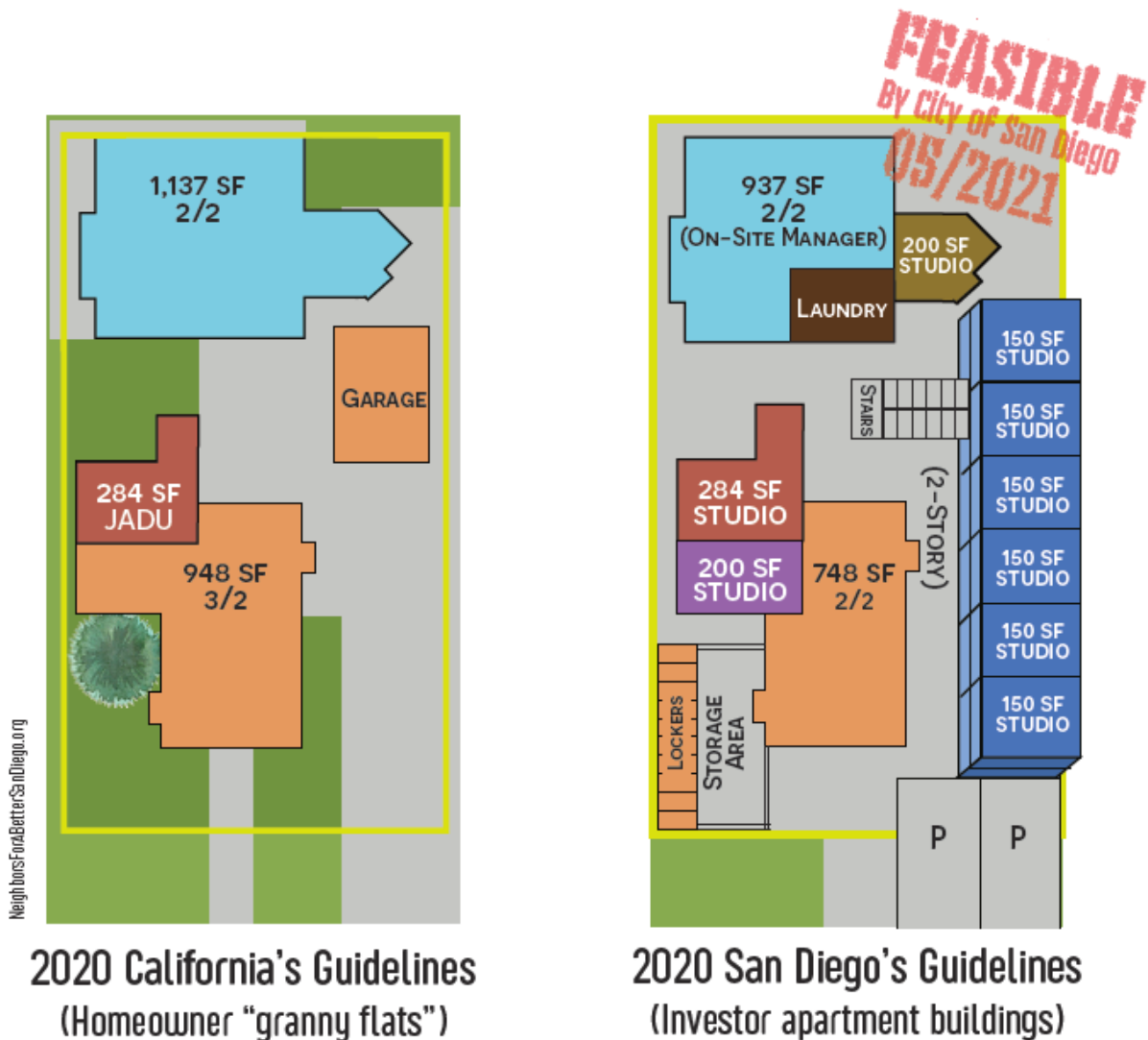
* Development Impact Fees (DIF), Regional Transportation Congestion Improvement Program Fees (RTCIP), General Plan Maintenance Fee (GPMF)

Technically, the number of ADUs allowed in a TPA is up to FAR limits within the 30' height and zero setbacks, and can be expressed algebraically as $2N+1$, where N is the number of affordable ADUs provided. In one scenario, Neighbors For A Better San Diego was able to fit 16 ADUs on a 7500 sf lot.

We detail below the number of ADUs allowed on a single-family zoned property, both inside and outside of Transit Priority Areas (TPAs). To better visualize what these numbers of units might look like on a single-family zoned property, we have constructed an example of what would be permitted inside a TPA, which is presented below. 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.

Example of an Allowed Project Inside a Transit Priority Area (TPA)

The graphic below illustrates what can be built inside a TPA. For reference, we have included on the left what would be allowed under the state code. The 16 ADU development on the right 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.)

| | Inside TPA | Outside TPA | Notes |
|--|---|--|--|
| Number of JADUs allowed | 1 141.0302(a)(1) | 1 141.0302(a)(1) | Property owner, shareholder or limited partner must live on premises. |
| Minimum number of ADUs allowed | 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.) |
| Maximum number of affordable ADUs allowed | 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) | |
| Number of bonus ADUs allowed | 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 |
| Total JADUs | 1 | 1 | 1 |
| Maximum ADUs | 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 |
| Total Possible Residences on a Single-Family Zoned Property | 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.

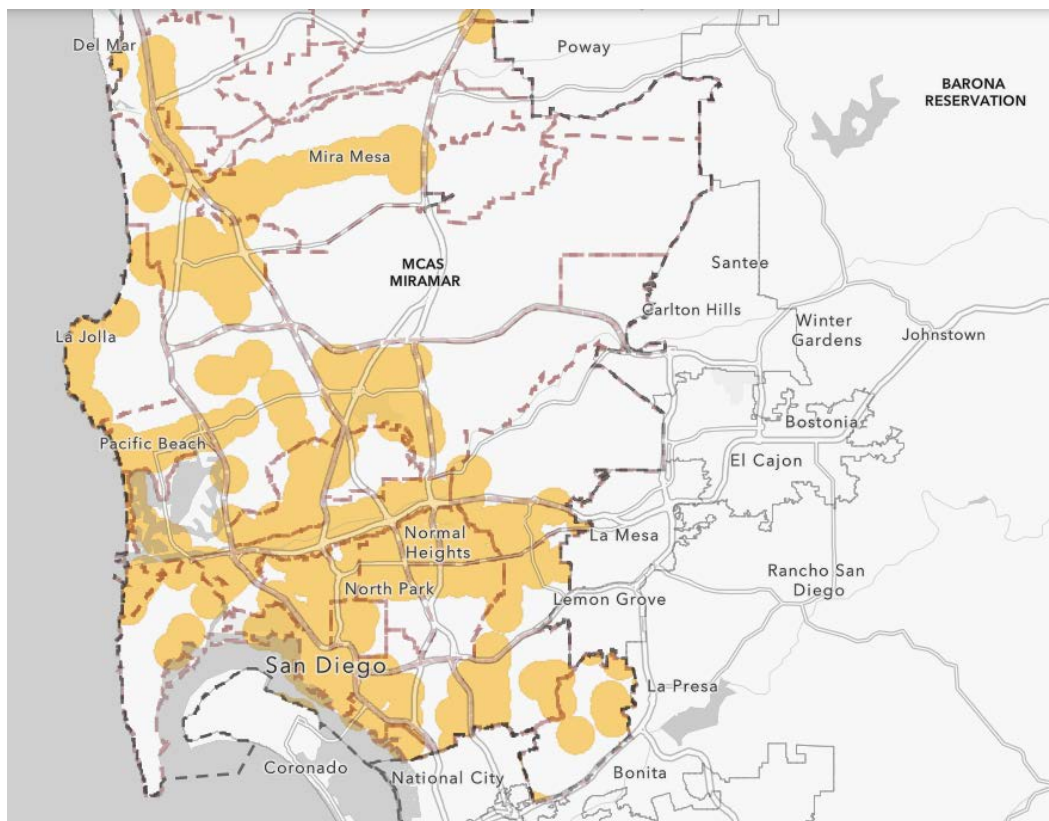
4. According to the City of San Diego's TPA map, the majority of residents (60%) live within Transit Priority Areas (TPAs).

San Diego Transit Priority Area 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), which in total allows five habitable units to be built on a single-family zoned lot outside a TPA.



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.