

1: Framing the Issue

As Chair of the volunteer group Neighbors For A Better San Diego, I am asking this Council to revisit and revise the action taken by the prior Council and Mayor last October in passing Ordinance 21254, which amended the Accessory Dwelling Unit (ADU) municipal code §141.0302.

Effectively, this ordinance upzoned all single-family residential areas in San Diego, without being properly presented and approved as a zoning change. In single-family zones within a half-mile of certain transit stops, ten or more units may now be built in front or back yards, 3 stories high, with no rear or side yard setbacks and no parking. For example, in my neighborhood a six-unit project consisting of two two-story apartment units, is currently under construction on a single-family lot.

Outside of Transit Priority Areas, any single-family lot can be built to 5 units. Coastal areas are only on hold only until the Coastal Commission acts on 21254.

Staff reports to the Council depicted the code changes as required to conform with state law. But in fact the changes far exceed state law, which set guidelines of just 1 ADU and 1 JADU in single-family zones.

A memo has been put forth prior to this meeting by District 9 Councilmember Elo-Rivera that proposes revisions to San Diego's ADU code. While we welcome this memo as a first step, and we agree with some of its components, we would like the city to go further towards addressing the concerns that residents have raised, and we would welcome the opportunity to present additional changes that will address those concerns.

I have included further details on our concerns with the city ADU code, as well as our proposed amendments to the code, which we feel address the concerns of many San Diego homeowners while not impairing the ability of other homeowners to construct ADUs.

2: Bonus density is the wrong approach to the state affordability requirement

California requires that cities provide affordable housing incentives when implementing the state's Accessory Dwelling Unit (ADU) law. Unfortunately, San Diego adopted a bonus ADU program, which goes way beyond what the state requires and has a number of unintended consequences.

First, the bonus density upzones all San Diego single-family neighborhoods by allowing 2 additional non-state required ADUs outside of Transportation Priority Areas (TPAs), and as many ADUs as fit on a lot inside TPAs.

Second, allowing de facto apartment complexes on single-family lots encourages investor speculation, which shuts out would-be home buyers and overburdens the infrastructure of our aging neighborhoods.

Third, the bonus density provisions are unclear as to the total number of ADUs allowed both inside and outside TPAs. The Development Services Department (DSD) decided, without going back to the Council for clarification, that the code allows an extra market rate ADU when applying the affordable density bonus. The city should write code that is consistently understandable and not leave it to the discretion of DSD staff to permit an additional unit out of thin air.

Other cities in California have implemented state-accepted affordability incentives without using density bonuses. These options include pre-approved plans, pairing ADUs with seniors, fee waivers, and allowing a size bonus to the one allowed ADU. As proposed by Councilmember Elo-Rivera, we urge the Council to revise its code to replace the ADU density bonus with one or more of these alternatives.

3: Smearred Density is Contrary to San Diego's Climate Action Plan

San Diego's 2020 ADU code conflicts with the city's stated climate action goals because it prioritizes smearing density away from transit corridors rather than focusing development along those corridors. San Diego's ADU policy turns San Diego into Los Angeles – gridlocked and overcrowded.

By waiving development fees, San Diego is not going to be able to build the parks needed to replace the green spaces lost from single-family properties, leading to heat islands and lost capacity to absorb runoff.

The lack of funds for new parks also means that the urban canopy on our single-family properties and our privately maintained public parkways are becoming our de facto parks, which are so important for physical and mental health.

Because San Diego's planning strategies are based solely on mass transit, they fail to adapt to modern circumstances, such as electric vehicles and data-driven ridesharing, which decrease the production of greenhouse gases per vehicle mile traveled and get passengers where they need to go in acceptable timeframes.

Finally, we need to recognize that infill development to achieve climate action goals will drive up land and hence housing costs unless other policies are put in place to control land speculation. Housing affordability and climate action are both important goals, but city planners need to account for the inherent tension between these goals if we are going to be successful in achieving them.

4: Wrong Approach to Infill Development

Homeowners were already producing ADUs prior to the city's density bonus, so from a planning standpoint, the density bonus has outsized negative consequences relative to its returns. We believe homeowners have a role to play in adding to the city's housing supply, and we feel that the limitations of the state guidelines are a reasonable compromise in adding density while preserving single-family neighborhoods, with the most important of these state guidelines being the limitation of 1 ADU and 1 JADU on a single-family property, with 4-foot setbacks and 16-foot maximum heights.

However, the city's ADUs density bonuses, particularly in Transit Priority Areas (TPAs), are only realizable by an investor – a typical homeowner would not have the means to produce the 3+ units, nor would they be likely to want to live on those properties. Meanwhile, because investors can make it pencil out by overbuilding properties with excess ADUs, they are outbidding would-be homeowners for smaller starter properties. The result is that San Diego's ADU incentives will move renters further from home ownership and the generational wealth building that comes with it.

Instead of overburdening/destroying single-family neighborhoods, city planners should be figuring out how to unlock development on the transit corridors and main thoroughfares where our city planners tell us development makes the most sense. With the update of the Kearney Mesa Plan, San Diego's Adequate Sites Inventory identifies more than enough capacity to meet San Diego's Regional Housing Needs Assessment. Instead of blaming homeowners for the city's failure to create housing, city planners should be bringing those homeowners into the planning discussion and converting them to supporters of future development that benefits all residents.

5: Transit Priority Area Definition is Flawed

Neighbors For A Better San Diego believes that Transit Priority Areas (TPAs) have been improperly applied to ADUs.

First, California ADU code makes no reference to TPAs.

Second, there is a major flaw in the definition of TPAs. Specifically, the state code defining TPAs does not stipulate how the distance to transit should be measured. Elsewhere in California code, including the ADU parking regulations, walking distance to transit is specified. However, San Diego's TPA map uses a projected Euclidean distance measure – "as the crow flies" – to draw the TPA map. There is no legal basis for this map and, until it is fixed, TPAs should be eliminated from all city permitting decisions.

In Nov 2017 Thematic Responses to Comments, the California Governor's Office, Office of Planning and Research, clearly warned of the problem, stating that: "APPLYING ONE SET OF RULES WITHIN TPAs AND ANOTHER OUTSIDE TPAs ...COULD ALSO ENCOURAGE LITIGATION"

There are numerous examples of areas in San Diego that are designated as in TPAs even though the designated transit stop is across a freeway or down a canyon and would take much more than one-half mile – in some cases up to two miles – for someone to walk there.

The pretense for the TPA-based density incentive is that ADU residents will not need cars. However, studies of transit planning make it quite clear that it is job density that drives transit usage far more than housing density. This is particularly important in San Diego, where jobs centers are scattered across the city and residents have over fifty times as many jobs available to them within 30 minutes commute by car versus mass transit.

6: Public Safety

Neighbors For A Better San Diego is very concerned that opportunities to address public safety issues, including fire safety, were ignored in San Diego's 2020 ADU code changes.

California allows cities to eliminate areas from ADU development based on issues of public safety, including very high fire hazard severity zones. San Diego chose not to do so and included all very high fire hazard severity zones as acceptable for increased density ADU development without exception.

California's ADU code also allows local jurisdictions to limit side and rear yard setbacks to four feet. These limits contribute to fire safety by providing access to the many canyons behind our single-family homes. But San Diego's new code eliminated side and rear yard setbacks, even in very high fire hazard severity zones.

The state's parameters enhance fire safety, privacy and neighborhood character, minimizing public safety threats and adverse impacts to neighbors' homes. We ask the Council to make the San Diego's code consistent with, not vastly in excess of, state ADU regulations, by requiring four feet side and rear yard setbacks for ADUs

7: Incentivize Truly Affordable Housing for the Long Term

Neighbors For A Better San Diego recognizes the need for affordable housing and support this goal. But, as is pointed out in Councilmember Elo-Rivera's memo, the ADU code passed last fall does not incentivize genuinely affordable housing.

Instead, the 2020 code encourages speculative development of market rate rentals that most San Diegans will not be able to afford. This is because it sets "affordable" rents to the income of people who earn 110 percent of Area Median Income. That's more than what the majority of San Diegans earn. How is that affordable? And how is that addressing the housing needs of lower income residents who are currently forced to double up in mid-range rentals in order to afford rent?

The ADU rent caps only last for 15 years. If we want truly affordable housing for the long term, affordability deeds should last at least 30 years.

Our research further concludes that the San Diego ADU code, particularly the density bonus, drives housing prices up, not down, and encourages the takeover of neighborhoods by absentee corporate landlords, instead of ADUs being added by resident homeowners as was envisioned by our legislators when they enacted the state code. The city's exceptions to the state code flood neighborhoods with vehicles, starve communities of infrastructure funds, and benefit speculators, not homeowners or renters.

Our ADU code should increase construction of housing that is needed – for very low to low income residents – not incentivize high-impact, low-return projects that only produce housing for those who earn more than most San Diegans.

8: Conclusion

Our volunteers are shocked that citywide upzoning was enacted last year through a summary process that involved far fewer hearings and much less public input than occurs during the established upzoning process. Instead, the ADU code changes were inaccurately characterized as a modest update to conform to new state law requirements.

We support the goal of increasing housing in San Diego. But we do not believe neighborhoods have to be torn apart and public safety sacrificed to realize this goal. Our diligent and fact-based research has convinced us affordability will be harmed, not helped, by the code passed last fall.

We ask this Council to revise the ADU code to conform to state law, but not counterproductively exceed it. We favor code changes that will create truly affordable housing while minimizing negative impacts to our communities. For reasons yet to be disclosed, the 2020 ADU code changes far exceeded state law mandates in ways that will have drastic impacts on single-family neighborhoods, while resulting in no significant decrease in housing prices or rents.

Revising San Diego's ADU code will go a long way towards restoring trust between the city and its residents, and we look forward to working with the city towards that goal.