

DRAFT CODE REWRITE

Option A-4

a/o September 29, 2021

§141.0302 Accessory Dwelling Units and Junior Accessory Dwelling Units

Section 141.0302 provides for the construction of Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs), consistent with the requirements of state law, and is intended to encourage the construction of ADUs and JADUs through several local regulatory provisions, including ~~allowing encroachment into the interior side yard and rear yard setbacks up to the property line,~~ eliminating parking requirements for ADUs and JADUs, providing pre-approved architectural plans for ADUs, and allowing, if the ADU is deed-restricted affordable, to build a two or more bedroom ADU up to 1200 square feet, and a DIF waiver for units that are greater than or equal to 750 square feet. and providing an affordable housing bonus of one additional ADU for every deed-restricted affordable ADU constructed on the premises, as specified in the regulations below. ADUs are permitted in all zones allowing residential uses and JADUs are permitted in all single dwelling unit zones by-right as a limited use decided in accordance with Process One, indicated with an “L” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

(a) The following regulations are applicable to both ADUs and JADUs:

(1) Use Regulations

(A) One ADU and one JADU are permitted on a premises located within a single dwelling unit zone.

(i) No more than two units, including ADUs and/or JADUs, will be permitted on lots resulting from subdivision under the authority of California Code §65852.21, §66411.7 or §66452.6.

(B) An ADU or JADU shall not be used for a rental term of less than 31 consecutive days.

(C) Guest quarters and non-habitable accessory structures shall be permitted in addition to ADUs and JADUs.

(2) Development Regulations

(A) A minimum lot size is not required for the construction of an ADU or JADU.

(B) ADUs and JADUs are not subject to the density limitations for the premises.

(C) The gross floor area of an ADU and JADU shall be included in the floor area ratio for the premises.

(D) The following setback allowances are applicable:

(i) Conversion of existing structure to an ADU or JADU. No setback is required for an existing dwelling unit or accessory structure that is converted to an ADU or JADU, or to a portion of an ADU or JADU. An ADU or JADU that is constructed in the same location and to the same dimensions as an existing structure may continue to observe the same setbacks as the structure it replaced.

(ii) New ADU and JADU structures. New ADU and JADU structures must comply with the front yard and street side yard setbacks of the zone. New ADU and JADU structures may encroach into the required interior side yard and rear yard setbacks up to the 4 feet from the property line, as allowed by state law. property line to accommodate construction of the ADU or JADU.

(E) The following height allowances are applicable:

(i) Conversion of an existing structure to an ADU or JADU. No height change is required for an existing dwelling unit or accessory structure that is converted to an ADU or JADU, or to a portion of an ADU or JADU. An ADU or JADU that is constructed in the same location and to the same length and width as an existing structure may continue to observe the same height or be raised to a total height of 16 feet.

(ii) New ADU and JADU structures. New ADU and JADU structures must not exceed 16 feet in height.

~~(F)~~ ADUs and JADUs shall not be required to provide fire sprinklers if they are not required for the primary dwelling unit. When located on a premises where the primary dwelling unit is protected with an automatic fire sprinkler system in accordance with Section R313 of the California Residential Code, an ADU or JADU shall be protected with an automatic fire sprinkler system.

### (3) Parking Regulations

(A) No on-street parking spaces or off-street parking spaces are required for ADUs and JADUs. If the applicant chooses to provide off-street parking spaces for ADUs and/or JADUs located on the premises, those spaces shall comply with the following:

(i) Off-street parking spaces may be located in any configuration, may be within the setback areas, and may include tandem spaces or mechanical lifts.

(ii) Off-street parking spaces shall be located within hardscape areas and shall comply with the minimum standards and guidelines to provide safe and efficient means of vehicular access to the lot.

(B) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or JADU, or converted to an ADU or JADU, replacement of those off-street parking spaces is not required.

(4) Development Impact Fees for ADUs and JADUs *shall comply with **Section 142.0640(b)***.

(b) In addition to the requirements in Section 141.0302(a), the following additional regulations are applicable to ADUs:

(1) Use Regulations

(A) The record owner is not required to live on the same premises as the ADU for any ADU permitted between January 1, 2020 and January 1, 2025. The record owner shall be required to live on the same premises of any ADU permitted after January 1, 2025.

(B) The ADU may not be sold or conveyed separately from the primary dwelling unit unless all of the following apply:

(i) The ADU was built or developed by a qualified nonprofit corporation. For the purposes of Section 141.0302(b)(1)(B)(i), a qualified nonprofit corporation means a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section 214.15 of the California Revenue and Taxation Code for properties intended to be sold to low-income families who participate in a special no-interest loan program.

(ii) There is an enforceable restriction on the use of the premises on which the ADU is located pursuant to a recorded contract between the qualified buyer and the qualified nonprofit corporation. For the purposes of Section 141.0302(b)(1)(B)(ii),

a qualified buyer means very low income, low income, median income, or moderate income households, as specified in Table 141-03A.

(iii) The lot where the ADU is located is held pursuant to a recorded tenancy in common agreement that includes an allocation to each qualified buyer of an undivided, unequal interest in the lot based on the size of the ADU each qualified buyer occupies; a repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the property if the buyer desires to sell or convey the property; a requirement that the qualified buyer occupy the property as the qualified buyer's principal residence; and affordability restrictions on the sale and conveyance of the property that ensure the property will be preserved for very low income, low income, median income or moderate income households for 45 years for owner-occupied housing and will be sold or resold to a qualified buyer.

(iv) A grant deed naming the grantor, grantee, and describing the property interests being transferred shall be recorded with the County. A Preliminary Change of Ownership Report shall be filed concurrently with this grant deed pursuant to Section 480.3 of the Revenue and Taxation Code.

(v) If requested by a utility providing service to the primary residence, the ADU has a separate water, sewer, or electrical connection to that utility.

## (2) Development Regulations for ADUs

(A) ADUs shall be permitted in all zones allowing residential uses, consistent with the Use Table of the applicable base zone with the exclusion of areas defined as very high fire hazard severity zones on the Official Very High Fire Hazard Severity Zones Map.

(B) No more than one ADU shall be permitted on a premises with an existing or proposed single dwelling unit.

(C) ADUs located on a premises with an existing or proposed multiple dwelling unit shall be permitted as follows:

(i) The number of ADUs permitted within the habitable area of an existing multiple dwelling unit structure is limited to 25 percent of the total number of existing dwelling units in the structure, but in no case shall be less than one ADU; and

(ii) Two ADUs that are detached from an existing multiple dwelling unit structure are permitted and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks; and

(iii) There is no limit on the number of ADUs permitted within the portions of existing multiple dwelling unit structures that are not used as livable space, including storage rooms, boiler rooms, passageways, attics, basements, or garages, if each ADU complies with state building standards for dwelling units.

(D) An ADU with a gross floor area of up to 800 square feet, 16 foot height, and no less than four-foot rear and side yard setbacks shall be permitted on a premises with an existing or proposed dwelling unit regardless of maximum lot coverage, maximum floor area ratio, and minimum open space requirements.

(E) An ADU may be attached to, located within, or detached from an existing or proposed primary dwelling unit, including garages and habitable or non-habitable accessory structures.

(F) The minimum gross floor area of an ADU shall not be less than 150 square feet. The maximum gross floor area of an ADU with up to one bedroom shall not exceed 850 square feet, and an ADU with two or more bedrooms shall not exceed ~~1,200~~ 1,000 square feet. An ADU constructed within an existing dwelling unit or accessory structure may construct an additional 150 square feet for ingress and egress only.

(G) ~~ADU Bonus for Affordable ADUs. One additional ADU shall be permitted for every ADU on the premises that is~~ The ADU may be set aside as affordable to very low income and low income~~and moderate income~~ households for a period of not less than ~~45~~ 30 years guaranteed through a written agreement, and a deed of trust securing the agreement, entered into by the applicant and the President and Chief Executive Officer of the San Diego Housing Commission.

~~(i) There is no limit on the number of bonus ADUs within a transit priority area.~~

~~(ii) One bonus ADU is permitted outside a transit priority area.~~

(i) If the ADU is deed-restricted affordable, it can exceed the 1,000 square foot limit by 200 square feet and must include two or more bedrooms.

~~(iii)~~ For an ADUs to be counted as affordable and meet the requirements of this Section 141.0302(b)(2)(G), the qualifying criteria in Table 141-03A shall be met.

Table 141-03A  
Qualifying Criteria for Affordable ADU Bonus

	Rental ADUs shall be affordable, including an allowance for utilities, at a rent that does not exceed:	For-Sale ADUs <sup>1</sup> shall be affordable at an affordable housing cost that does not exceed:
Very Low Income households	30 percent of 50 percent of the area median income, as adjusted for family size appropriate for the unit.	30 percent of 50 percent of the area median income, as adjusted for family size appropriate for the unit.
Low Income households	Low Income households 30 percent of 60 percent of the area median income, as adjusted for family size appropriate for the unit.	30 percent of 70 percent of the area median income, as adjusted for family size appropriate for the unit.
Moderate Income households	<del>Moderate Income households 30 percent of 110 percent of the area median income, as adjusted for family size appropriate for the unit.</del>	<del>35 percent of 110 percent of the area median income, as adjusted for family size appropriate for the unit.</del>

Footnotes for Table 141-03A

(1) For-sale ADUs are subject to the requirements of Section 141.0302(b)(1)(B).

(c) In addition to the requirements in Section 141.0302(a), Junior Accessory Dwelling Units are subject to the following additional regulations:

(1) Use Regulations

(A) The record owner is required to live on the same premises as the JADU.

(B) The JADU may not be sold or conveyed separately from the primary dwelling unit.

(C) Before a Building Permit may be issued for a JADU, the record owner shall enter into an agreement with the City in a form that is approved by the City Attorney. The agreement shall include the following provisions: the JADU may not be sold or conveyed separately from the primary dwelling unit; the agreement may be enforced against future purchasers; and the record owner shall reside on the premises. The City shall submit the agreement to the County Recorder for recordation. The agreement shall run with the land for the life of the JADU.

## (2) Development Regulations

(A) One JADU is permitted on a premises located within a single dwelling unit zone with an existing or proposed primary single dwelling unit.

(B) A JADU of not less than 150 square feet and not more than 500 square feet is permitted within an existing or proposed single dwelling unit, an attached or detached garage, or an ADU. A JADU constructed within an existing structure may construct an additional 150 square feet for ingress and egress only.

(C) A JADU shall have a separate exterior entry from the primary dwelling unit and shall provide a kitchen or an efficiency kitchen.

(D) A JADU shall have side and rear setbacks that are sufficient for fire and safety.

(“Accessory Dwelling Units and Junior Accessory Dwelling Units” added 10-30-2020 by O-21254 N.S.; effective 11-29-2020. Former Section 141.0302 “Companion Units, Junior Units, and Movable Tiny Houses” repealed.)

## §142.0640 Impact Fees for Financing Public Facilities

### (a) Purpose

The purpose of this Section is to implement the City's General Plan which contains policies related to the maintenance of an effective facilities financing program to ensure the impact of new development is mitigated through appropriate fees. This Section applies to communities identified as Facilities Benefit Assessment communities and Development Impact Fee communities in the City's General Plan. Facilities Benefit Assessments (FBAs) and Development Impact Fees (DIFs) are collectively identified as DIFs. Nothing in this Section shall be construed to prohibit the City from imposing additional DIFs on a particular project.

(b) Payment of Fees Development Impact Fees (as defined in California Government Code Section 66000) for applicable development shall be paid at the time required building permit fees are paid and no later than the first inspection of the development performed by the City in areas where Development Impact Fees have been established by City Council resolution or ordinance. Notwithstanding the above, the City Manager may also require the payment of Development Impact Fees for development that would increase demand for public facilities and/or result in the need for new public facilities. Development Impact Fees shall not be required for inclusionary dwelling units provided pursuant to Chapter 14, Article 2, Division 13 if the applicant has satisfied all the requirements of Division 13 for inclusionary dwelling units on the same premises as the market-rate dwelling units. The Development Impact Fee required by the City Manager shall be paid at the time required building permit fees are paid and no later than the first inspection of the development performed by the City.

### Partial Exemptions:

The development of an accessory dwelling unit less than 750 square feet on a single premises shall be exempt from any impact fee. Any market rate accessory dwelling unit greater than or equal to 750 square feet shall be charged impact fees proportionately in relation to the square footage of the primary dwelling unit.

### Exemptions:

- (1) Deed-restricted Accessory Dwelling Units, Junior Accessory Dwelling Units, movable tiny houses, and guest quarters are exempt from DIFs.
- (2) Permanent Supportive Housing, low barrier navigation centers, and transitional housing facilities are exempt from DIFs.



(3) Inclusionary dwelling units provided pursuant to Chapter 14, Article 2, Division 13 are exempt from DIFs if the applicant has satisfied all the requirements of Division 13 for inclusionary dwelling units on the same premises as the market-rate dwelling units.

(4) For development utilizing the Complete Communities: Housing Solutions Regulations in Chapter 14, Article 3, Division 10, all covenant-restricted affordable dwelling units and dwelling units that do not exceed 500 square feet are exempt from DIFs.

(5) For development utilizing the Complete Communities: Housing Solutions Regulations in Chapter 14, Article 3, Division 10, the DIF for the residential development shall be scaled in accordance with Table 142-06A based upon the dwelling unit size.

Table 142-06A

Scaled Development Impact Fee Rate for Residential Development Utilizing the Housing Solutions Program

Unit Size (SF) Scaled Fee Rate

1,251>	Full Fee
1,201-1,250	99%
1,151-1,200	97%
1,101-1,150	95%
1,051-1,100	92%
1,001-1,050	90%
951-1,000	87%
901-950	85%
851-900	83%
801-850	80%
751-800	78%
701-750	76%
651-700	73%
601-650	71%
551-600	68%
501-550	66%