



COUNCILMEMBER SEAN ELO-RIVERA  
NINTH COUNCIL DISTRICT

MEMORANDUM

**DATE:** September 13, 2021

**TO:** Mayor Todd Gloria

**FROM:** Councilmember Sean Elo-Rivera

**SUBJECT:** Request for Revisions to Accessory Dwelling Unit Regulations

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**Background**

Housing is stability, opportunity, and dignity. Yet San Diegans today face staggering housing costs<sup>1</sup>, with opportunities for first time homebuyers falling out of reach for most and the cost to rent far outpacing wage growth.<sup>2</sup> As has been often reported, a significant driver of the affordability crisis -and the related homelessness crisis- in San Diego is the insufficient supply of homes to meet our community's needs.<sup>3</sup> <sup>4</sup> After decades of insufficient construction, a range of housing options, including multifamily homes, single-family homes, and Accessory Dwelling Units (ADUs), will be needed if we are to be successful in the fight for housing for all.

Complicating San Diego's housing crisis is the ever-worsening climate emergency. Climate experts are sounding alarms with increasing frequency and urgency about the need to substantially and immediately reduce greenhouse gas emissions.<sup>5</sup> In San Diego, transportation

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<sup>1</sup> Molnar, Phillip. "San Diego Rent Keeps Rising. and Chances Are It Won't Stop." *San Diego Union-Tribune*, 13 Aug. 2021, [www.sandiegouniontribune.com/business/real-estate/story/2021-08-13/san-diego-rent-keeps-rising](http://www.sandiegouniontribune.com/business/real-estate/story/2021-08-13/san-diego-rent-keeps-rising).

<sup>2</sup> Molnar, Phillip. "San Diego Home Prices Now up 25% in a Year. Second-Hottest Market in the Nation." *San Diego Union-Tribune*, 27 July 2021, [www.sandiegouniontribune.com/business/real-estate/story/2021-07-27/san-diego-home-prices-now-up-25-in-a-year](http://www.sandiegouniontribune.com/business/real-estate/story/2021-07-27/san-diego-home-prices-now-up-25-in-a-year).

<sup>3</sup> *California's High Housing Costs: Causes and Consequences*. Legislative Analyst's Office, 17 Mar. 2015, [lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.aspx](http://lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.aspx).

<sup>4</sup> Keatts, Andrew. "How San Diego's Housing Shortage Became So Dire." *Voice of San Diego*, 3 Sept. 2019, [www.voiceofsandiego.org/topics/land-use/how-san-diegos-housing-shortage-became-so-dire/](http://www.voiceofsandiego.org/topics/land-use/how-san-diegos-housing-shortage-became-so-dire/).

<sup>5</sup> "Sixth Assessment Report." *AR6 Climate Change 2021: The Physical Science Basis*, Intergovernmental Panel on Climate Change, [www.ipcc.ch/report/ar6/wg1/](http://www.ipcc.ch/report/ar6/wg1/).

– namely, cars – is the main source of these dangerous emissions.<sup>6</sup> In other words, in order for San Diego to do its part to address climate change, we must substantially reduce vehicle miles traveled by immediately allowing more people to live in transit-oriented communities. In fact, the Rocky Mountain Institute recently shared that urban infill development will “be the largest opportunity for reducing climate pollution through local policy for...San Diego.”<sup>7</sup>

With housing affordability and climate change far too important to ignore, San Diego has taken initial steps to promote infill development. Included in these steps are a series of legislative changes at both the state and local level that have greatly increased the feasibility of building ADUs. These changes have succeeded at spurring an increase in ADU development. I support ADUs as a piece of our housing puzzle, I support affordability, and I support clean and healthy neighborhoods for all. I also believe it is important to continuously assess policy choices to ensure they are having the desired impact and to revisit those policy choices to address unintended negative consequences.

My office and I have listened to the feedback of many community members, including ardent supporters and opponents of the current policy, and conducted a thorough analysis of the regulations put into place by the previous administration. Following months of conversations with stakeholders and analysis, I propose to work with Mayor Gloria to bring forward the following revisions to address affordable housing, environmental, and quality of life concerns in San Diego’s ADU regulations:

### **Recommendations**

#### ***Increased Affordability***

Current ADU Bonus Program regulations allow for a bonus ADU to be permitted for every deed-restricted ADU affordable at 120% Area Median Income (AMI) for 15 years.<sup>8</sup> While building “missing middle” housing is badly needed, this bonus should only be offered for deed-restricted ADUs at 80% AMI to ensure that these homes are actually available at lower rents than the market rate bonus home for which it allows. In addition, I propose an option to allow ADU bonus units at 90% AMI if restricted for 20 years—5 years longer than the existing bonus program.

This strengthening of our commitment to below market rate affordability will serve the purposes of providing affordable homes during a time of skyrocketing rents and be an affirmative step in addressing the de jure and de facto segregation that continues to play a substantial role in determining access to opportunity in our City.

#### ***Urban Tree Canopy Preservation***

In order to maintain our City’s urban tree canopy, pursuant to our Climate Action Plan (CAP) goals, it is important that we mitigate the loss of mature shade trees that are removed as a result of construction of an ADU. With this in mind, I propose that any development of an ADU that removes a mature shade tree is required to replace each tree, either (1) in the parkway immediately adjacent to the property or, if not feasible, (2) within the community planning

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<sup>6</sup> City of San Diego, Sustainability Department. *Climate Action Plan 2019 Annual Report Appendix*, [https://www.sandiego.gov/sites/default/files/2019\\_caparappendix.pdf](https://www.sandiego.gov/sites/default/files/2019_caparappendix.pdf).

<sup>7</sup> Subin, Zach. “Build Mixed-Income Housing in Wealthy Urban Neighborhoods.” *CleanTechnica*, RMI.org, 3 July 2021, [cleantechnica.com/2021/07/03/build-mixed-income-housing-in-wealthy-urban-neighborhoods/](https://cleantechnica.com/2021/07/03/build-mixed-income-housing-in-wealthy-urban-neighborhoods/).

<sup>8</sup> City of San Diego. *San Diego Municipal Code*, §141.0302 (b) (2) (G), <https://docs.sandiego.gov/municode/MuniCodeChapter14/Ch14Art01Division03.pdf>.

area that the ADU was constructed in. Moreover, to ensure replacement trees are of maximum benefit to the community, newly planted trees must be consistent with the City's Street Tree Selection Guide.<sup>9</sup>

### **Privacy**

Constituents have raised concerns about how additional housing in their neighbor's backyards may impact their sense of privacy in their own homes. To mitigate the loss of privacy that many residents feel with the construction of ADUs, I propose requiring the installation of appropriately sized fences, trees, bushes, or other privacy additions for any multi-story ADU developments to mitigate these concerns.

Current regulations allow for fences to be permitted up to 9 feet in height on the side and rear yards. I request staff update fence regulations to require taller fences for multi-story ADUs along the side or rear yard if a window is present. This would not apply on the sides of a wall without a window for an ADU story above ground level.

### **Additional Future Considerations**

The following recommendations are proposals that I support developing further but may need more time to research and plan than land development code updates outlined above.

### **Additional Affordability Programs**

San Diego can do more to incentivize more affordable ADU construction beyond regulatory updates. Other jurisdictions have developed unique programs to spur affordable ADU construction that San Diego can look to for guidance. One program pairs older adults with homeowners willing to provide a stable home by offering their ADUs as rentals.<sup>10</sup> In exchange, homeowners receive benefits such as qualified tenant referrals, tenant case management, and stable rental payments. Another California jurisdiction provides an ADU Loan Pilot Program that provides homeowners with a forgivable loan of \$75,000 to construct new ADUs, and \$50,000 for rehabbing existing unpermitted ADUs that will house people transitioning out of homelessness for a minimum of ten years.<sup>11</sup>

San Diego, via the Housing Commission, should also consider the development of a revolving loan program that offers forgivable loans for seniors interested in downsizing from their home into an onsite ADU if that homeowner rents the primary residence to a very low or extremely low income family. This program could help simultaneously address the affordability challenges inhibiting the ability of some seniors from downsizing<sup>12</sup>, while providing low-income families with quality housing in high opportunity neighborhoods and maintaining neighborhood stability.

To keep our city inclusive and help create a healthy and stable future for all, I request we

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<sup>9</sup> City of San Diego, Transportation Department. *Street Tree Selection Guide*, <https://www.sandiego.gov/sites/default/files/street-tree-selection-guide.pdf>.

<sup>10</sup> LA ADU Accelerator Program, City of Los Angeles, [adu.lacity.org/](http://adu.lacity.org/).

<sup>11</sup> *Second Dwelling Unit (Accessory Dwelling Unit) Pilot Program*, County of Los Angeles, [planning.lacounty.gov/secondunitpilot](http://planning.lacounty.gov/secondunitpilot).

<sup>12</sup> Semmler, Ed. *Homeowners Reluctant to Leave an Empty Nest. Here's Why and How That Might Change*. South Bend Tribune, 13 July 2021, [www.southbendtribune.com/story/news/2021/07/13/south-bend-indiana-home-real-estate-housing-market-why-some-empty-nesters-stay-sidelines/7907192002/](http://www.southbendtribune.com/story/news/2021/07/13/south-bend-indiana-home-real-estate-housing-market-why-some-empty-nesters-stay-sidelines/7907192002/).

develop additional affordability programs for our seniors, low-income families and for folks experiencing homelessness.

### ***Enforcement***

San Diegans should be confident that our City's rules and codes will be enforced. Unfortunately, generations of insufficient revenue have left our City's code enforcement team stretched too thin to provide residents with confidence that rules will be enforced.

In addition to continuing my support for the funding of additional code enforcement positions, I recommend reinstating the City's resident-led Code Compliance Volunteer Program, which could address quality of life concerns such as parking on front lawns and other code violations visible from the public right-of-way, and re-examining Code Enforcement's Priority of Cases.

Moreover, it must be acknowledged that our City has serial bad actors that have taken advantage of lax enforcement to the significant frustration of the neighbors of those neglectful property owners. This issue is especially pronounced in the College Area where a few owners of dozens of properties have continuously flouted rules. Absent stronger enforcement, these irresponsible property owners will almost certainly exploit the City's new ADU rules to the serious detriment of residents, both those who live in those homes and their neighbors. These concerns are compounded by the growing presence of large corporate enterprises in owning multifamily and single-family rental properties.

I recommend the City implement a progressive enforcement model that recognizes the outsized impact that a single owner - be that an individual or a corporation - of many properties can have on our City. Relatedly, we will continue to advocate for the City to create a rental registry so we can do better in monitoring and holding accountable the property owners who most impact San Diego.

### ***Maintenance Assessment District Fees***

Current state ADU law exempts ADUs up to 750 square feet from incurring impact fees from local agencies, special districts, and water corporations. In an effort to address infrastructure needs in our Mid-City neighborhoods and further build upon our City's base of Maintenance Assessment Districts (MADs), I propose that new ADUs that are 750 square feet or larger be assessed on a square foot basis.

I believe a modest MAD assessment fee can help ensure fairness and provide communities with yet another benefit of increased density. An assessment fee will be significantly lower than Development Impact Fees and would be feasible to be incurred by a homeowner who desires to build ADUs on their property.

As a first step towards potentially assessing MAD fees, I have asked City staff to determine the feasibility and methodology of assessing ADUs. Lastly, I will be requesting that our City Attorney's office determine any legal questions and concerns related to unilaterally assessing ADUs.

### ***Speculation Mitigation***

Waiving DIF fees is an important incentive to make the development of ADUs more attainable for homeowners looking to add homes on their property. However, there is an important difference between incentivizing homeowners to pursue wealth-building opportunities and giveaways for corporate investors looking to maximize their profits with no care for their impact on the neighborhood.

Therefore, I recommend continuing to waive DIF fees for all ADUs on owner-occupied lots while beginning to charge the fees that the City has the legal ability to charge for when an ADU development is not owner-occupied and is owned by an investor, an LLC, or Real Estate Investment Trust. Levied DIF fees would only be applied according to state law, meaning that any developer would continue to receive DIF fees waived for units smaller than 750 square feet and all deed-restricted homes but begin to pay into impact fees for larger or market rate homes to contribute to badly needed infrastructure improvements in all neighborhoods.

### ***Infrastructure***

Generations of insufficient revenue and underinvestment have left many neighborhoods in District 9 with failing infrastructure. Residents have expressed an understandable concern that their already deficient infrastructure will buckle under the weight of increased density. The Mayor has taken important steps to address this concern through his “Sexy Streets” initiative. We propose additional initiatives that prioritize investment in infrastructure in older neighborhoods that see significant increases in density.

To support this proposal, we recommend pursuing potential grants from President Biden’s Unlocking Possibilities Program, “an innovative, new \$5 billion competitive grant program that awards flexible and attractive funding to jurisdictions that take concrete steps to eliminate needless barriers to producing affordable housing and expand housing choices for people with low or moderate incomes.”<sup>13</sup>

### ***Parking Policies***

Parking policies have an outsized impact on our policy goals, including our housing and Climate Action Plan goals. I encourage the City to analyze how our on-street parking policies, including the residential parking permit program, can be used to intentionally advance our shared goals while also successfully managing parking in the public right-of-way within Transit Priority Areas.

More specifically, I recommend the development of residential parking permits for all single-family zones in Transit Priority Areas that would limit the number of permits provided to any one parcel, regardless of the number of ADUs on that parcel. Each home in an existing multifamily condominium or apartment would each receive the same number as a single-family home parcel. However, since ADUs are accessory to a single-family home, ADUs would not receive additional parking permits. By doing so, we can simultaneously mitigate the impact on quality of life for existing residents and on infrastructure by managing parking and encouraging alternative modes of transportation while also ensuring the City secures the considerable environmental benefits that well-planned infill development can and should deliver.

### ***Analyze Effective City Communication & Community Education***

Excellent governance requires excellent communication. Unfortunately, previous City leadership ignored the importance of communication beyond press opportunities and community trust has eroded. That must change. As the Mayor and the Council undertake a bold, progressive agenda to bring forward opportunity for all, we must ensure that the City properly

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<sup>13</sup> *Fact Sheet: Biden-Harris Administration Announces New Actions to Build Black Wealth and Narrow the Racial Wealth Gap*. The White House, 1 June 2021, [www.whitehouse.gov/briefing-room/statements-releases/2021/06/01/fact-sheet-biden-harris-administration-announces-new-actions-to-build-black-wealth-and-narrow-the-racial-wealth-gap/](https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/01/fact-sheet-biden-harris-administration-announces-new-actions-to-build-black-wealth-and-narrow-the-racial-wealth-gap/).

communicates the truth about policies proposed or already in effect to bring community members alongside us. Failing to do so undermines the trust that we require in order to achieve our ambitious goals and allows for misinformation to take root.

Additionally, we must recognize that the expansion and decentralization of methods of communication have made it easier for misinformation to rapidly become “common knowledge” within communities. This creates a barrier to our ability to identify problems and solutions. With this in mind, I propose that the City intentionally study how we can better keep our constituents informed of policy changes, embody transparency, and empower constituents to be active members of City government.

### *Community Character*

Many constituents understand the need for more housing in all neighborhoods, but want the changes to respect the neighborhood’s architectural history. The Central Urbanized Planned District (CUPD) requires that new multifamily development include architectural features from specific architectural styles. These same features required in multifamily should also be required for ADUs within the CUPD and any other planned district that also require architectural features.

As resources permit, the permit-ready building plans currently available could be updated to provide a range of architectural features for various architectural styles that could be easily used in Planned Districts where regulations require architectural features. Updating the Land Development Code to require that ADUs comply with architectural feature requirements should not be implemented until permit-ready building plans featuring various architectural styles are available for use, to ensure that compliance with architectural styles does not incur additional costs to the development of ADUs.

### *College Area*

Many of the issues outlined in this memo are especially compounded in the College Area, where a lack of student housing for a university in a traditionally single-family neighborhood has resulted in negative outcomes for students and neighbors alike. These issues range from paving over front yards for parking, overcrowded homes, exploitative rents for substandard living conditions, and more. I propose forming an advisory group assembled with San Diego State University leadership, students, residents, and Planning and Development Services departments to discuss how to ensure the safety and well-being of all residents.

I offer my full support and the support of my staff in assessing the above proposals for consideration to address the needs of all San Diegans to have access to quality, affordable housing, and clean and healthy neighborhoods.

For any questions or concerns, please contact Maya Rosas, Deputy Chief of Staff, Ninth Council District, at [rosasm@sandiego.gov](mailto:rosasm@sandiego.gov) or (619) 236-6699.

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