

CALIFORNIA VERSUS SAN DIEGO 2020 ADU CODES – SIGNIFICANT POINTS OF DIFFERENCE

The charts below detail the differences between California state law and San Diego Municipal Code regarding the implementation of Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs). Although San Diego is only required to implement state law, there are many provisions where San Diego deviates from the state requirements, as noted.

The analysis is broken into the three sections of the San Diego ADU code: Use Regulations, Development Regulations, and Parking Regulations.

Unless otherwise specified, CA ADU Code refers to: §65852.2, effective January 1, 2021.

Unless otherwise specified, SD ADU Code refers to: §141.0302 Accessory Dwelling Units and Junior Accessory Dwelling Units (“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 Former Section 141.0302 “Companion Units, Junior Units, and Movable Tiny Houses” repealed.)

Note that the analysis focuses on single-family parcels and may not apply to multi-family properties.

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USE REGULATIONS

SUBJECT	CA 2020 ADU CODE	SAN DIEGO 2020 ADU CODE	COMMENTS
BY-RIGHT ADUs/JADUs	<p>(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following: A) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply...</p> <p>(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.</p> <p>(ii) The space has exterior access from the proposed or existing single-family dwelling.</p> <p>(iii) The side and rear setbacks are sufficient for fire and safety.</p> <p>(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.</p>	<p>(A) ADUs shall be permitted in all zones allowing residential uses, consistent with the Use Table of the applicable base zone.</p> <p>(B) No more than one ADU shall be permitted on a premises with an existing or proposed <i>single dwelling unit</i>.</p> <p>One ADU and one JADU are permitted on a premises located within a single dwelling unit zone.</p> <p>An ADU may be attached to, located within, or detached from an existing or proposed primary <i>dwelling unit</i>, including garages and habitable or non-habitable <i>accessory structures</i>.</p> <p>An ADU constructed within an existing <i>dwelling unit</i> or <i>accessory structure</i> may construct an additional 150 square feet for ingress and egress only.</p> <p>A JADU shall have a separate exterior entry from the primary <i>dwelling unit</i> and shall provide a <i>kitchen</i> or an <i>efficiency kitchen</i>.</p> <p>A JADU of not less than 150 square feet and not more than 500 square feet is permitted within an existing or proposed <i>single dwelling unit</i>, an attached or detached garage, or an ADU.</p>	<p>Base codes for CA and SD allow for building one ADU and one JADU.</p> <p>CA code requires that side and rear setbacks are sufficient for fire and safety. San Diego code requires no rear or side setbacks and therefore makes no provisions for fire or safety relative to setbacks.</p> <p>CA code requires JADUs be within the single-family residence or attached garage. Additionally, SD code allows JADUs to also be permitted within a detached garage or an ADU.</p>
VACATION RENTALS	...a local agency may require that the property be used for rentals of terms longer than 30 days.	An ADU or JADU shall not be used for a rental term of less than 31 consecutive days.	Comparable

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SUBJECT	CA 2020 ADU CODE	SAN DIEGO 2020 ADU CODE	COMMENTS
OPTION TO ELIMINATE AREAS FROM ADU DEVELOPMENT	<p>(a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:</p> <p>(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.</p>	<p>ADUs are permitted in all zones allowing residential uses and JADUs are permitted in all <i>single dwelling unit</i> 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.</p>	<p>San Diego chose not to eliminate any areas from ADU/JADU development, failing to make any provisions for impacts to water, sewer, traffic, public safety or high fire hazard zones.</p>

CALIFORNIA VERSUS SAN DIEGO 2020 ADU CODES – SIGNIFICANT POINTS OF DIFFERENCE

DEVELOPMENT REGULATIONS

SUBJECT	CA 2020 ADU CODE	SAN DIEGO 2020 ADU CODE	COMMENTS
ADU OWNER OCCUPANY REQUIREMENTS	<p>(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed, including any owner-occupant requirement, except that a local agency may require that the property be used for rentals of terms longer than 30 days.</p> <p>Per CA ADU Handbook 12/2020 page 17: “The updates to state ADU law removed the owner-occupancy allowance for newly created ADUs effective January 1, 2020. The new owner-occupancy exclusion is set to expire on December 31, 2024. Local agencies may not retroactively require owner occupancy for ADUs permitted between January 1, 2020, and December 31, 2024.”</p>	The <i>record owner</i> is not required to live on the same <i>premises</i> as the <i>ADU</i> .	<p>CA code prohibits owner-occupancy requirements by local agencies for ADUs permitted between January 1, 2020, and January 1, 2025 (Gov. Code, § 65852.2, subd. (a)(6)).</p> <p>San Diego code is unclear as to whether the owner occupancy restriction will be re-imposed for ADUs permitted after January 1, 2025.</p>
ADU HEIGHT LIMIT	Local agencies may impose height limits provided that the limit is no less than 16 feet. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i).)	San Diego ADU Code is silent on height limits as it relies on the underlying RS zone, which allows a 30-foot height limit.	<p>San Diego’s 30-foot height limit for ADUs is well beyond the 16-foot height limit CA ADU code allows. SD Code allows for a 3-story building.</p> <p>Because SD Code has no setback requirements, there are also no angled-plane requirements, meaning that there can be 30 foot tall sheer walls at rear and side property lines. This permits construction that shades neighbors’ homes, yards and solar panels. If on three sides, entire backyard could be boxed in by neighboring ADUs.</p>

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SUBJECT	CA 2020 ADU CODE	SAN DIEGO 2020 ADU CODE	COMMENTS
SETBACK FOR CONVERSION OF EXISTING DWELLING OR ACCESSORY UNIT	(vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit,	No <i>setback</i> is required for an existing <i>dwelling unit</i> or <i>accessory structure</i> that is converted to an <i>ADU</i> or <i>JADU</i> , or to a portion of an <i>ADU</i> or <i>JADU</i> . An <i>ADU</i> or <i>JADU</i> that is constructed in the same location and to the same dimensions as an existing <i>structure</i> may continue to observe the same <i>setbacks</i> as the <i>structure</i> it replaced.	Comparable
SETBACKS FOR NEW ADU/JADU	...and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.	New <i>ADU</i> and <i>JADU structures</i> must comply with the front <i>yard</i> and <i>street side yard setbacks</i> of the zone. New <i>ADU</i> and <i>JADU structures</i> may encroach into the required interior side <i>yard</i> and rear <i>yard setbacks</i> up to the <i>property line</i> to accommodate construction of the <i>ADU</i> or <i>JADU</i>.	CA code allows 4 foot side and rear yard setbacks for new ADUs/JADUs, whereas SD requires 0 foot setbacks (which also eliminates angled-planes).
STATEWIDE (FAR) EXEMPTION ADU	(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following: (C) Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.	An <i>ADU</i> with a <i>gross floor area</i> of 800 square feet shall be permitted on a <i>premises</i> with an existing or proposed <i>dwelling unit</i> regardless of maximum <i>lot coverage</i> , maximum <i>floor area ratio</i> , and minimum open space requirements.	Both CA and SD code allow a FAR exemption for a single ADU of ≤800 sf. CA allows limiting the ADU height to 16 feet with 4 foot rear and side yard setbacks, but SD does not limit heights to 16 feet nor require rear or side yard setbacks.

CALIFORNIA VERSUS SAN DIEGO 2020 ADU CODES – SIGNIFICANT POINTS OF DIFFERENCE

SUBJECT	CA 2020 ADU CODE	SAN DIEGO 2020 ADU CODE	COMMENTS
INCENTIVIZING AFFORDABLE ADUs	<p>SEC. 1. Section 65583 of the Government Code is amended to read:</p> <p>(7) Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent, as defined in Section 50053 of the Health and Safety Code, for very low, low-, or moderate- income households. For purposes of this paragraph, “accessory dwelling units” has the same meaning as “accessory dwelling unit” as defined in paragraph (4) of subdivision (i) of Section 65852.2.</p>	<p>(G) <i>ADU Bonus for Affordable ADUs.</i> One additional <i>ADU</i> shall be permitted for every <i>ADU</i> on the <i>premises</i> that is set aside as affordable to <i>very low income, low income, and moderate income</i> households for a period of not less than 15 years guaranteed through a written agreement, and a deed of trust securing the agreement, entered into by the <i>applicant</i> and the President and Chief Executive Officer of the San Diego Housing Commission.</p> <p>(i) There is no limit on the number of bonus <i>ADUs</i> within a <i>transit priority area</i>.</p> <p>(ii) One bonus <i>ADU</i> is permitted outside a <i>transit priority area</i>.</p>	<p>CA requires local jurisdictions to incentivize the production of affordable ADUs. The most common incentives are pre-approved ADU plans and waived or discounted fees. San Diego does both of these and then offers from 3 to unlimited ADUs on single-family lots in exchange for deeding some of those ADUs affordable. There is no mention of “bonus ADUs” in the CA ADU code.</p> <p>In SD on any single-family lot, one can build 5 housing units – the single-family home, one JADU and 3 ADUs (one by-right market rate, one deeded-affordable and one bonus market rate). In SD within a TPA on any single-family lot, one can build unlimited ADUs up to the floor area ratio (FAR) – the single-family home, one JADU, one by-right ADU and then pairs of ADUs (deeded-affordable + bonus market-rate) up to the FAR.</p> <p>To date, all SD deeded-affordable ADUs have been moderate-income 110% area median income AMI making the “affordable” rents comparable to or slightly higher than median market-rate rents for studio and one bedroom units (the most common ADU sizes built in CA). Note: The SDHC Bonus Program Process stipulates: “Deed restricted ADUs shall be comparable to the market rate ADUs in either the number of bedrooms (plus or minus a bedroom) or the square footage (plus or minus 15%).”</p> <p>We don’t consider the following to be comparable: A studio ≠ a one bedroom A one bedroom ≠ a 2 bedroom 850 sf ≠ 1000 sf; 1000 sf ≠ 1150 sf</p>

CALIFORNIA VERSUS SAN DIEGO 2020 ADU CODES – SIGNIFICANT POINTS OF DIFFERENCE

SUBJECT	CA 2020 ADU CODE	SAN DIEGO 2020 ADU CODE	COMMENTS
USE OF TRANSIT PRIORITY AREAS (TPA) TO DETERMINE NUMBER OF ADUs ALLOWED	CA ADU Code makes no mention of TPAs.	<p>(G) <i>ADU Bonus for Affordable ADUs.</i> One additional <i>ADU</i> shall be permitted for every <i>ADU</i> on the <i>premises</i> that is set aside as affordable to <i>very low income</i>, <i>low income</i>, and <i>moderate income</i> households for a period of not less than 15 years guaranteed through a written agreement, and a deed of trust securing the agreement, entered into by the <i>applicant</i> and the President and Chief Executive Officer of the San Diego Housing Commission.</p> <p>(i) There is no limit on the number of bonus <i>ADUs</i> within a <i>transit priority area</i>.</p> <p>(ii) One bonus <i>ADU</i> is permitted outside a <i>transit priority area</i>.</p>	<p>CA ADU code allows the same number of units (one ADU and one JADU) everywhere in the state, unrelated to TPA.</p> <p>DSD relies exclusively on the TPA map as the sole criteria to determine the maximum number of ADUs allowed on a single-family parcel, even though the state law on which it is based, 21099, doesn't define how to measure distance and by extension how to draw the map.</p>

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Definition of TPA	CA ADU Code makes no mention of TPAs. It does make a reference to parking standards not being applicable if the accessory dwelling unit is located “within one-half mile walking distance of public transit.”	Transit Priority Area is not defined in the ADU Municipal Code (§141.0302), but is defined in Municipal Code Chapter 11, Article 3: Land Development Terms: “Transit priority area means the area defined in California Public Resources Code Section 21099, as may be amended, or an area within one-half mile of a major transit stop that is existing or planned, if the planned major transit stop is scheduled to be completed within the planning horizon included in a Transportation Improvement Program.”	California Public Resources Code Section 21099 does not actually define how the distance to transit should be measured. As indicated, the CA ADU code references walking distance, which would be the most reasonable measure, but SD’s TPA map instead uses the projected Euclidean distance. In addition to the measurement of distance being undefined and therefore legally ambiguous, a 2017 document, Thematic Responses to Comments, from the CA Governor’s Office, Office of Planning and Research, advises against using the TPA to distinguish between two areas: <i>As a legal matter, the definition of “transit priority areas” is not clear in the statute. For example, the boundaries of a transit priority area may shift as bus routes and service frequencies change, and as plans for future transit investments change. Those changes may be made by multiple agencies, and no one agency is charged with maintaining current and accurate delineations of transit priority areas. As a result, applying one set of rules within transit priority areas and another outside would impose a significant burden on lead agencies to determine on a project by project basis which rules apply. Such uncertainty could also encourage litigation.</i>

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DEVELOPER FEE WAIVERS	<p>(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.</p> <p>(B) For purposes of this paragraph, “impact fee” has the same meaning as the term “fee” is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. “Impact fee” does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.</p>	<p>§142.0640 Impact Fees for Financing Public Facilities (a) (b) Payment of Fees The payment of DIFs (as defined in California Government Code Section 66000) shall be required prior to issuance of any Building Permit in areas where DIFs have been established by City Council resolution or ordinance. Notwithstanding the above, the City Manager may also require the payment of DIFs prior to issuance of any Construction permit issued or required for development that would increase demand for public facilities and/or result in the need for new public facilities. The DIFs due shall be determined in accordance with the fee schedule approved by the applicable City Council resolution in effect upon the issuance of a Building Permit, or Construction permit, as applicable, and may include an automatic increase consistent with Section 142.0640(c). -PAGE 17 OF 26- (0-2020-114) REV. COPY Exemptions: (1) Accessory dwelling units, including dwelling units as defined as companion units, junior units, movable tiny houses, or guest quarters are exempt from DIFs.</p>	<p>CA waives any impact fee on the development of an ADU < 750 sf.</p> <p>San Diego exempts ALL ADUs, from the first one to the last one that maxes out the FAR, from Development Impact Fees (DIF), Regional Transportation Congestion Improvement Program Fees (RTCIP), and General Plan Maintenance Fee (GPMF)</p> <p>These fee waivers starve neighborhoods of much-needed infrastructure – infrastructure (parks, libraries, water and sewer improvements, road and traffic upgrades) that was already deficient prior to the increased demands of density contributed by ADUs.</p>

CALIFORNIA VERSUS SAN DIEGO 2020 ADU CODES – SIGNIFICANT POINTS OF DIFFERENCE

PARKING REGULATIONS

SUBJECT	CA 2020 ADU CODE	SAN DIEGO 2020 ADU CODE	COMMENTS
ADU PARKING REQUIREMENTS	<p>A local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.</p> <p>(x) (l) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less.</p> <p>(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:</p> <p>(1) The accessory dwelling unit is located within one-half mile walking distance of public transit.</p> <p>(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.</p> <p>(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.</p> <p>(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.</p> <p>(5) When there is a car share vehicle located within one block of the accessory dwelling unit.</p>	<p>No on-street parking spaces or <i>off-street parking spaces</i> are required for ADUs and JADUs.</p>	<p>CA allows parking requirements for ADUs of one space per ADU or bedroom, whichever is less, for those ADUs not within ½ mile walking distance of public transit, within architecturally/historically significant areas, etc.</p> <p>SD requires no parking for ADUs or JADUs, on or off-street regardless of distance from transit, architecturally/historically significant areas, etc. and regardless of quantity of units built.</p>

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SUBJECT	CA 2020 ADU CODE	SAN DIEGO 2020 ADU CODE	COMMENTS
OFF-STREET PARKING FOR ADUs	<p>These spaces may be provided as tandem parking on a driveway.</p> <p>(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.</p> <p>(III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).</p>	<p>If the <i>applicant</i> chooses to provide <i>off-street parking spaces</i> for ADUs and/or JADUs located on the <i>premises</i>, those spaces shall comply with the following:</p> <p>(i) <i>Off-street parking spaces</i> may be located in any configuration, may be within the <i>setback</i> areas, and may include tandem spaces or mechanical lifts.</p> <p>(ii) <i>Off-street parking spaces</i> shall be located within <i>hardscape</i> areas and shall comply with the minimum standards and guidelines to provide safe and efficient means of vehicular access to the <i>lot</i>.</p>	SD code allows off-street parking in any configuration and adds the allowance of mechanical lifts for parking.
REPLACEMENT PARKING REQUIREMENTS FOR GARAGE/CARPORT DEMOLITION	(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.	When a garage, carport, or covered parking <i>structure</i> is demolished in conjunction with the construction of an ADU or JADU, or converted to an ADU or JADU, replacement of those <i>off-street parking spaces</i> is not required.	Comparable

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.

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.

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