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June 13, 2025

Heidi Vonblum, Planning Director
City of San Diego
202 C Street, M.S. 413
San Diego, CA 92101

Dear Heidi Vonblum:

RE: San Diego City Council's Consideration of Amendments to the Accessory Dwelling Unit (ADU) Density Bonus Program – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) is aware that on March 4, 2025, the San Diego City Council moved to request that staff return with an action item to remove the eligibility for the City's ADU Home Density Bonus Program from eight of the City's 14 RS-1 residential zones. Additionally, the Council requested that staff bring forward significant revisions to the ADU Home Density Bonus Program in all remaining zones, including high and very high fire hazard severity zones. Further, on May 1, 2025, a memo with these proposed amendments was presented to the Planning Commission as part of a larger group of amendments, including to the City's ADU ordinance.

HCD understands that the ADU Home Density Bonus Program is intended to supplement the City's ADU ordinance and offer more opportunities to construct housing than is strictly required by state law. However, upon learning of the City Council's decision and the subsequent recommendations, HCD conducted a review that raised significant concerns regarding the City's ADU ordinance, 6th Cycle housing element implementation, duty to Affirmatively Further Fair Housing (AFFH), and Prohousing Designation.

Background and Timeline

In October of 2020, the City of San Diego (City) adopted a series of housing legislation reforms, including the City's ADU Home Density Bonus Program. As of this writing, this program has seen 875 ADUs permitted, including 368 with affordability restrictions, according to City staff.

The following are key dates related to the City's actions to amend the ADU Home Density Bonus Program:

- **January 28, 2025** – City Council Meeting
  During a regular City Council meeting, the City Council moved to request that staff return within 60 days with an action item to remove and repeal the City's ADU Home Density Bonus Program and strictly adhere to the minimum standards provided within State ADU Law. Despite the bonus program's absence from the agenda and following repeated recommendations from the City Attorney and Assistant City Attorney to raise the issue at a publicly noticed meeting in compliance with the Brown Act, the City Council approved the motion.

- **February 28, 2025** – Memorandum to the City Council
  The Memorandum to the City Council following January's meeting presented several potential amendments and addressed recent related actions and potential concerns related to the repeal of the ADU Home Density Bonus Program.

- **March 4, 2025** – City Council Meeting
  During a regular City Council meeting, the City Council voted in favor of a motion for the following:
  > "Request City Staff to return to City Council within 90 days with an action item to remove applicability of the ADU Density Bonus program from the San Diego Municipal Code, conforming the local ADU Bonus Program to state-mandated ADU regulations for single-family zoned parcels in RS-1-1, RS-1-2, RS-1-3, RS-1-4, RS-1-8, RS-1-9, RS-1-10, and RS-1-11 zoned parcels; and
  > Request the City Planning Department to bring forward revisions to the ADU Density Bonus program including, but not limited to, those provided in the February 28, 2025, memorandum to the Land Use and Housing Committee for consideration."[1]

  During this meeting, concerns regarding the City's housing element compliance were raised and subsequently dismissed.

- **March 25, 2025** – City News Release
  A news release titled "Gloria Administration Proposes Reforms to ADU Density Bonus Program, Invites Public Feedback" was released,[2] and largely mirrors the proposed amendments in the February 28, 2025 memorandum.
- **April 24, 2025** – Memorandum to the Planning Commission
  City staff provided a report[3] to the Planning Commission, detailing the following proposed amendments, consistent with the previous memorandum on February 28, 2025, and the mayor's March 25, 2025 news release.

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[1] "City Council Meeting Results Summary, March 4, 2025," available at https://sandiego.hylandcloud.com/211agendaonlinecouncil/Meetings/ViewMeeting?id=6429&doctype=3&site=council.
[2] "Gloria Administration Proposes Reforms to ADU Density Bonus Program, Invites Public Feedback," available at https://www.sandiego.gov/sites/default/files/2025-03/2025-03-25-gloria-administration-proposes-reforms-to-adu-density-bonus-program-invites-public-feedback.pdf.
[3] "Report to the Planning Commission," available at https://www.sandiego.gov/sites/default/files/2025-04/planning-commission-report-no-pc-25-016_0.pdf.

Analysis

1. ADU Ordinance

The recommendation for changes described above highlights several policies which are inconsistent with State ADU Law, both within the City's ADU Home Density Bonus Program and within its general ADU ordinance. These items include, but are not limited to:

- Item 2 – *Unit Allowances* – The proposed amendments only allow three statutorily-required units on a single-family lot. However, Government Code section 66323, subdivisions (a)(1)-(4) require, in certain circumstances, that a single-family lot may allow for a primary dwelling, one detached, new construction ADU under 800 square feet, one ADU converted from existing space in the primary unit or an accessory structure, and one junior accessory dwelling unit (JADU) within the primary residence, for a total of four units.

- Item 11 – *Setbacks* – The proposed amendments state that within Very High Fire Hazard Severity Zones (VHFHSZs), ADUs will be required to have five-foot setbacks. However, Government Code section 66314, subdivision (d)(7) requires only four-foot side and rear setbacks for all ADUs. The fire separation distance and defensible space requirements within the California Building Standards Code, "Title 24" for additional fire separations will still apply regardless of ADU setback requirements. Fire separation distance and defensible space cannot be conflated with setbacks.

- Item 12 – *Replacement Parking* – The proposed amendments would require replacement parking when an uncovered parking spot is demolished or converted outside of any Transit Priority Area (TPA), or within local zoning overlays. However, Government Code section 66314, subdivision (d)(11), and section 66322, subdivisions (a)(1)-(6) provide exemptions for parking requirements which apply to all ADUs regardless of local zoning standards, the City's ADU Ordinance, or any other law.

The above is not intended to take the place of a formal review, nor is it an exhaustive list; HCD may provide additional guidance in future communications. The adoption of these amendments would result in the City having an ADU ordinance that is inconsistent with State ADU law, in addition to diminishing the effectiveness of the City's successful ADU Home Density Bonus Program in a way which may be inconsistent with other state laws.

Finally, upon review of the City's regulations for multiple-dwelling and urban lot split regulations in single-family zones, it was noted that section 143.1305, subdivision (c)(2) prohibits ADUs and JADUs on a lot that proposes, or has utilized the urban lot split provisions of section 143.1315, as well as requires existing ADUs and JADUs to be converted into what the City refers to as "multiple dwelling units." However, ADUs and JADUs are explicitly included within the definition of "unit" provided in Government Code section 66411.7, subdivision (j)(2). While Government Code section 65852.21, subdivision (f) states that a local agency shall not be required to permit ADUs or JADUs on parcels utilizing the provisions of both that section and Government Code section 66411.7, existing ADUs and JADUs may be one of the two units allowed on either of the newly-created parcels pursuant to Government Code sections 65852.21 and 66411.7. Furthermore, requiring all ADUs and JADUs on a lot to be converted into a different type of dwelling unit strips them of the protections within State ADU Law. This unduly restricts ADUs and JADUs on lots which utilize lot splits and is inconsistent with state law.

2. Housing Element Law

As the City is aware, through Housing Element Law, the Legislature has established that "the availability of housing is of vital statewide importance, and the early attainment of decent housing and a suitable living environment for every Californian, including farmworkers, is a priority of the highest order."[4] The City contributes to this statewide effort through the housing programs in its 6th Cycle Housing Element (2021-2029), once the housing element has been adopted by the City and found to be in substantial compliance with Housing Element Law by HCD. On September 10, 2021, HCD found the City's 6th cycle housing element in substantial compliance.

AFFH in the Housing Element

The City's ability to demonstrate a commitment to AFFH is an important part of the housing element certification process. In the letter certifying the City's housing element, HCD noted that the element includes only marginally sufficient actions to AFFH.[5] The proposed amendments to the City's ADU Home Density Bonus Program and ADU ordinance mark a shift that may be inconsistent with several of the policies that the City has committed to. Additionally, as outlined in HCD's September 10, 2021, housing element review, the City must continue to analyze and address fair housing concerns.

This action by the City Council would move the City further away from addressing these AFFH findings. As a result, the City's housing element may require an amendment in order to accommodate the substantial cuts made to the ADU Home Density Bonus Program. The City would need to submit that amendment for HCD's review for substantial compliance with Housing Element Law.[6]

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[4] Gov. Code, § 65580, subd. (a).
[5] Housing Element Compliance Letter, available at https://www.sandiego.gov/sites/default/files/hcd_letter_sd_city_adopted_-_final_-_9-10-2021.pdf
[6] Gov. Code, § 65585, subd. (b)(1).

Housing Element Law also include AFFH obligations that require that local agencies promote and assist in the development of housing for persons with lower incomes and other characteristics protected by state law; actively engage in outreach; and include an assessment of fair housing, a sites analysis, and policies and programs that AFFH in the housing element.[7] In these assessments, the City is required to use data, quantifiable analysis, metrics, and milestones to analyze and implement its AFFH programs.[8]

The proposed amendments to the ADU bonus program implicate each of these duties because the City relied on the ADU bonus program to satisfy the AFFH requirements of its housing element. According to the analysis of fair housing issues on pg. HE-A-236 of the City's housing element, the ADU bonus program is a meaningful action to address multiple fair housing issues.[9] Issues which rely, in part or whole, on the ADU bonus program to comply with AFFH laws are as follows:

- Access to Opportunity:
    - Within Racially/Ethnically Concentrated Areas of Poverty (R/ECAPS[10]) and Integration/segregation
    - For Persons with Disabilities
- Disproportionate Housing Needs
    - Overcrowding
    - Homelessness
    - Displacement Risk

Under Item 14, the proposed amendments remove program eligibility for the ADU Home Density Bonus Program in the following eight residential zones: RS-1-1, RS-1-2, RS-1-3, RS-1-4, RS-1-8, RS-1-9, RS-1-10, and RS-1-11. This amounts to nearly one quarter of the total eligible area for the program, or approximately 25,689 acres. Approximately 22,324 acres, or roughly 20 percent of the total eligible area is outside of the SDA where there is a maximum of one bonus ADU home. Under the current development standards, removing eligibility from these zones would cut applicability of the program by approximately 20 percent of the eligible spaces where production is most likely to result in between one and three ADUs, as 98 percent of all ADU projects within the City have been. The primary concerns raised during City Council meetings were related to large, outlier projects and substantial increases in residential density where the infrastructure cannot support it. However, the proposed amendments to eligibility criteria appear to go much farther than addressing those concerns by removing eligibility from 20 percent of the area where fewer units would be allowed in the first place and by imposing prohibitive restrictions on the remainder of all eligible sites.

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[7] Gov. Code, § 65583.
[8] *Id.*
[9] Appendix HE-A, available at https://www.sandiego.gov/sites/default/files/he_appa_assessmentfairhousing_final.pdf.
[10] The racial/ethnic concentration R/ECAPs must have a non-white population of 50 percent or more and census tracts with 40 percent or more of individuals living at or below the poverty line.

A significant change in the eligible area for the ADU Home Density Bonus Program may jeopardize the City's compliance with the AFFH programs in its housing element. While the City did provide an analysis of what the residents of underserved communities want, which includes more ADUs, more housing for rent or purchase in areas with good jobs and schools, and more rent-restricted affordable housing, the City has not released findings on the potential impacts of the amendments to the ADU Home Density Bonus Program's applicability in R/ECAPS, or areas with disproportionate housing needs. There are several reasons to believe the current program is providing AFFH benefits that will be lost under the proposed changes.

Notably, the Voluntary Accessibility Program (described below) currently grants an additional accessible ADU, even outside of the Sustainable Development Area (SDA). The proposed amendments would only allow for an additional accessible unit where the ADU Home Density Bonus Program is utilized. As a result, there would be fewer eligible areas, and significant barriers imposed upon these accessible units. And most projects utilizing the ADU Home Density Bonus Program are located within Tax Credit Allocation Committee (TCAC) opportunity areas identified as moderate, high, or highest resource, meaning the program is successfully creating more housing in higher resource areas – a critical AFFH goal. If an analysis of the sites finds that the ADU Home Density Bonus Program would shift affordable or accessible development out of these higher resource areas, the City would be at risk of not fulfilling its program and policy goals to satisfactorily address the fair housing issues identified within its analysis.

Other Housing Element Programs

In addition to the AFFH-related reasons listed above, the ADU Home Density Bonus Program is integral to the housing element's continued compliance. The "ADU Incentive Program" is first mentioned on page HE-50 of San Diego's housing element, under Goal 1, Objective C – "Facilitate the construction of quality housing by providing programs that incentivize development."

Other housing element programs which may be utilized in tandem with the ADU Home Density Bonus Program – and may therefore be impacted by the changes to the program – include:

- Historic Neighborhood Accessory Dwelling Unit Guidance
    - Develop guidance and suggestions for how homeowners can successfully add ADUs to properties that are designated as historic or are located within historic districts.

- Voluntary Accessibility Program
    - [E]ncourages residential development that incorporates accessible design features to meet the needs of as many users as possible. The intent is to reduce the potential for occupants to be displaced from their homes due to a disability, to allow those persons to visit neighboring dwelling units, and to increase the number of accessible dwelling units in the local housing supply that meet long term housing needs by offering incentives that facilitate this type of accessible design.

Additionally, this program is a key part of the implementation of multiple policies within the housing element. The following housing element policies would be impacted by the proposed amendments:

- HE-C.1
    - Develop and maintain policies and programs that identify obstacles to building affordable housing, infill housing, and smart growth housing development, and provide regulatory strategies and tools that will streamline the development process.
- HE-C.2
    - Create and promote programs and incentives that stimulate the production of new units across all household incomes, ages, types, and needs.
- HE-C.7
    - Incentivize the provision of ADUs that are covenant restricted for very low, low-, and moderate-income households.
- HE-C.11
    - Allow densities that exceed ranges defined in the zone for projects using State density bonus provisions and for projects within designated TPA.

Moreover, the ADU Home Density Bonus Program is listed on page HE-120 as an incentive program with an anticipated 40 covenant-restricted units per year, to run for the entirety of the 2021-2029 housing element cycle.[11] This program commitment exists regardless of whether or not the City has met its housing production goals.

[11] City of San Diego Certified Housing Element (2021 – 2029), available at https://www.sandiego.gov/sites/default/files/he_final_print_view_june2021.pdf

As a reminder, if a review of the City's actions find that they are inconsistent with the City's housing element, or fail to implement programs in the housing element, HCD may revoke housing element compliance, opening the City to the "Builder's Remedy" as described in the Housing Accountability Act.[12] Decertification of the City's housing element would also result in the City losing eligibility or priority for a number of funding opportunities, including the Prohousing Incentive Program (PIP), Affordable Housing and Sustainable Communities (AHSC), and the Infill Infrastructure Grant (IIG) program.

3. General AFFH Obligation

A public agency must not only incorporate AFFH programs into its housing element, as described above, but is responsible for complying with AFFH principles in all its activities and programs relating to housing and community development.[13] Government Code section 8899.50, subdivision (a)(1), defines AFFH as "taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics." In addition, public agencies are prohibited from taking any action that is materially inconsistent with their obligation to AFFH.[14]

The ADU Home Density Bonus Program offers a valuable opportunity to provide much-needed affordable housing opportunities in areas with access to critical resources and amenities. As described above, the proposed amendments, which would repeal the program's applicability within eight residential zones, comprising approximately 20 percent of the area where small-scale ADU production is most likely, and apply additional restrictions on ADUs regardless of their eligibility for the ADU Home Density Bonus Program, would impact ADU development within critical resource areas. This would raise concerns about whether the amended provisions are "materially inconsistent" with the City's obligation to AFFH.

4. Prohousing Designation Status

The proposed amendments to the City's ADU ordinance and ADU Home Density Bonus Program could impact the City's Prohousing Designation due to the significant departure from programs which were promised and taken into consideration at the time HCD approved San Diego's Prohousing application on December 15, 2022.

The City applied to the Prohousing Designation Program in April of 2022, with the final draft submitted in November of 2022. HCD awarded the City 3 points on its application for utilizing Category 1E, to increase allowable density in low-density residential areas through allowing ADUs and JADUs in excess of State ADU Law. The program description is:

[12] Gov. Code, § 65589.5, subd. (d).
[13] Gov. Code, § 8899.50, subd. (b)(1).
[14] *Id.*

> "Accessory Dwelling Unit Bonus for Affordable ADUs program allows for one additional ADU for every ADU that is set aside as affordable to very low income, low income, and moderate income households."

San Diego's ADU Home Density Bonus Program was specifically referenced in HCD's award letter, highlighting an example of praiseworthy prohousing policies; however, the substantial shift in the program's implementation under the proposed amendments may trigger a review, and potentially result in revocation, of the City's Prohousing Designation.[15]

Conclusion

As outlined above, the proposed amendments to the ADU Home Density Bonus Program include several provisions which may be inconsistent with state law, including ADU Law, Housing Element Law, and AFFH, as well as the City's Prohousing Designation. While HCD understands the potential need to amend the existing program requirements to meet the needs of local communities, the City should consider more targeted amendments which address the specific, adverse unintended consequences.

HCD would also like to remind the City that HCD has statutory authority to enforce ADU Law, Housing Element Law and AFFH. Accordingly, HCD may review the City's actions and inactions to determine consistency with these laws. If HCD finds that the City's actions are inconsistent with, or fail to implement, the City's housing element programs, HCD may revoke its finding of compliance.[16] In addition, if HCD finds that the City's actions do not comply with state law, HCD may notify the California Office of the Attorney General that the City is in violation of state law.[17]

HCD requests that the City respond to this letter by July 11, 2025 with the City's intended next steps, or an alternative means of implementation which is consistent with state law. If you have questions or need additional information, please contact Tyler Galli at (916) 776-7613 or Tyler.Galli@hcd.ca.gov.

Sincerely,



David Zisser
Assistant Deputy Director
Local Government Relations and Accountability

[15] CCR Title 25, § 6607, subd. (a)(1).
[16] Gov. Code, § 65585, subd. (i)(1).
[17] Gov. Code, § 65585, subd. (j).