

**Attachment B – AN ORDINANCE
AMENDING THE SAN DIEGO COUNTY
ZONING ORDINANCE PART SIX:
GENERAL REGULATIONS:
ACCESSORY USE REGULATIONS
Related to Accessory Dwelling Unit
(ADU) and Junior Accessory Dwelling
Unit (JADU) Section 6156.x
(Underline Copy)**

(Underline indicates addition)

ORDINANCE NO. ~~10858~~ (New Series)

**AN ORDINANCE AMENDING THE SAN DIEGO COUNTY ZONING ORDINANCE PART SIX:
GENERAL REGULATIONS: ACCESSORY USE REGULATIONS Related to Accessory
Dwelling Unit (ADU) and Junior Accessory Dwelling Unit (JADU) Section 6156.x
(Underline Copy)**

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. The Board of Supervisors finds and determines that the San Diego County Zoning Ordinance should be updated by amending or adding various sections regarding accessory use regulations related to Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs). The amendments made by this ordinance are intended to ensure compliance with recent changes to California housing laws. Amendments also include implementation of one opt-in legislation.

Section 2. Section 6156.x of the Zoning Ordinance is amended to read as follows:

x. Accessory Dwelling Unit (ADU) and Junior Accessory Dwelling Unit (JADU).

An ADU means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. Any structure designed for human habitation that is divided into two or more independent and attached living units on a single lot is considered a multifamily complex (such as duplex, triplex, stacked dwellings, etc.), for the purposes of this section. For the purpose of calculating allowable density under the General Plan, an ADU is not counted toward the density of a lot. ADUs are classified as accessory use.

A JADU means a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. Additions and enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence, for purposes of this section. A JADU may include separate sanitation facilities or may share sanitation facilities with the existing structure. For purposes of providing service for water, sewer, or power, including a connection fee, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit from the primary unit. No separate electric meter will be permitted for JADUs.

A. ADU Permit Approval. Approval of ADUs shall be subject to the following criteria:

1. For an ADU proposed in conjunction with a proposed or existing primary residence, the ADU is either attached to an existing primary residence or detached and on the same legal lot.

[\[The Board will vote on the adoption of AB 1033, resulting in one of the alternative outcomes below. The display of these alternatives is for information purposes only.\]](#)

Alternative 1 (new language incorporating AB 1033, if adopted)

2. ADU may be rented but is not intended for sale separate from the primary residence, unless the lot is subdivided [in conformance with qualifications for the ministerial approval of a two-lot subdivision](#) creating a separate lot for each dwelling, [or condominiums are created in conformance with requirements outlined under Section 6156.x.D. of the County's Zoning Ordinance pertaining to the sale of ADUs](#), or the conditions [pertaining to Nonprofits and tenancy in common agreements](#) established under Section 66341 of the California Government Code are met.

Alternative 2 (existing language, as-is, currently in the County ZO)

2. ADU may be rented but is not intended for sale separate from the primary residence, unless the lot is subdivided [in conformance with qualifications for the ministerial approval of a two-lot subdivision](#) creating a separate lot for each dwelling, or the conditions [pertaining to Nonprofits and tenancy in common agreements](#) established under Section 66341 of the California Government Code are met.
3. [The ADU shall not be rented for a term of less than 31 days.](#)
4. The total floor area of an attached ADU shall not exceed 50% of the floor area of the [primary residence](#), up to a maximum floor area of 1,200 square feet. The 50% square foot limitation is not applicable for attached ADUs up to 850 square feet or up to 1,000 square feet if it has more than one bedroom.
5. The total floor area of a detached ADU shall not exceed 1,200 square feet, independent of the square footage of the existing [primary residence](#).
6. Applicants must provide mathematical computations of the "floor area" for both units on the plot plans, and these calculations must be taken from the exterior dimensions of the outside walls.
7. Total floor area of a proposed accessory structure attached to a detached ADU shall not exceed the allowable combined square footages per Section 6156.g of the Zoning Ordinance, or unless authorized by an approved Administrative Permit.
8. Any proposed accessory structure, attached to an ADU, exceeding 1,000 sq. ft. (combined with all other accessory structure per Section 6156.g) and/or more than 12' in height, are subject to the main building setbacks and height regulations of the Zoning Ordinance.
9. An attached or detached patio, deck, and/or balcony is subject to Section 4835 of the Zoning Ordinance.
10. A detached ADU is limited to 25' in height.
11. An existing and permitted accessory structure [may be converted into an ADU. Such a conversion is not subject to any size requirements if it does not expand beyond the existing envelope of the permitted accessory structure.](#)

12. An ADU may be attached to an existing and permitted, or proposed recreation room, if there is a defined fire and sound separation wall or floor between the ADU and recreation room. Any openings (doors, windows, or penetrations) are required to be fire rated.
13. No setbacks are required if an existing and permitted accessory structure, or a portion thereof is being converted into an ADU, except for fire safety, private wells, and installed septic systems.
14. A minimum setback of at least 4' from the side and rear lot lines is required for an ADU that is being constructed above a permitted detached accessory structure. If corner lot, the exterior side yard setback must be at least 4' from the edge of easement/street/and/or property line. The setbacks only apply to the added space above the accessory structure and the ADU can be constructed wholly or partly above the accessory structure, including extending beyond the accessory structure walls.
15. All newly constructed detached and/or attached ADU's must comply with the required front yard setbacks and a minimum side and rear setback of at least 4'.
16. If corner lot, the exterior side yard setback must be at least 4' from the edge of easement, street, and property line.
17. A detached and/or attached ADU may encroach into the required front yard setbacks if it would otherwise prevent the construction of an ADU that is 800 sq. ft. or smaller.
18. If the ADU is in the front yard setbacks, it cannot block the driveway, or access of the two required off-street parking spaces for the existing primary residence, unless two replacement off-street parking spaces have been provided.
19. An accessory structure, or patio attached to an ADU must comply with the required exterior side yard setbacks.
20. An ADU shall provide one parking space. The parking space may be located within the setbacks and in an existing driveway as tandem parking. Parking spaces don't need to be replaced when a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or converted into an ADU.
21. A parking space is not required for the ADU in any of the following instances:
 - a. The ADU is located within one-half mile of public transit.
 - b. The ADU is located within an architecturally and historically significant historic district.
 - c. ADUs that are part of the proposed or existing primary residence or an accessory structure.
 - d. When on-street parking permits are required but not offered to the occupant of the ADU.
 - e. When there is a car share vehicle located within one block of the ADU.
 - f. When a permit application for an ADU is submitted with a permit application to create a new single-family dwelling or a new multifamily dwelling on the same lot, provided that the ADU or the parcel satisfies any other criteria listed in this subdivision

22. Multiple detached single-family residences on the same lot are not considered a multifamily complex but the lot may qualify for one detached ADU, one ADU within the proposed space of a single-family dwelling or existing space of a single -family dwelling or accessory structure, and one JADU.
23. Properties that have an existing non-conforming primary residence and are in a zone that does not allow for a primary residence may qualify for one detached ADU, one ADU within the proposed space of a single-family dwelling or existing space of a single -family dwelling or accessory structure, and one JADU.
24. A permit for an unpermitted ADU or unpermitted JADU constructed before January 1, 2020, shall not be denied due to violation of building standards or noncompliance with this section, unless correction of the violation is necessary to comply with Onsite Wastewater Treatment System (OWTS) standards specified in Section 68.301 et seq of the San Diego County Code of Regulatory Ordinances and/or Health and Safety Code standards specified in Health and Safety Code section 17920.3, or the building has been deemed substandard.
25. A homeowner applying for a permit for a previously unpermitted ADU or JADU constructed before January 1, 2020, shall not be required to pay impact fees or connection or capacity charges except when utility infrastructure is required to comply with all applicable Health and Safety Code requirements. Necessary permits to correct noncompliance with health and safety standards shall be approved without penalty by the Planning and Development Services Department.

B. Ministerial ADU and JADU Permit Approval. Ministerial approval of qualifying ADUs and JADUs, within a residential or mixed-use zone, shall be subject to the following criteria, in accordance with California Law Government Code Section 66323 as detailed in this subsection:

1. Any of the following categories may be created, as allowed by the site and lot conditions, and may be combined. As such, a single-family lot may have at least one ADU constructed from existing space, one JADU, and one newly constructed detached ADU; or a multifamily lot may have at least one ADU constructed from existing non-livable space and up to 8 detached:
 - a. Single-Family Converted ADUs and JADUs: One ADU and/or one JADU per lot with a proposed or existing single-family dwelling if all of the following apply:
 - i. The ADU and/or JADU 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 dwelling or accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.
 - ii. The space has exterior access from the proposed or existing single-family dwelling.
 - iii. The side and rear setbacks are sufficient for fire and safety.
 - iv. The JADU complies with the requirements set forth in this section.

- b. Single-Family Detached ADUs: One detached, new construction, ADU, (which may be combined with a JADU), that does not encroach into the four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling with the following conditions:
 - i. The total floor area of a detached ADU approved under this subsection shall not exceed 800 square feet.
 - ii. The height of detached ADU approved under this subsection shall not exceed 18 feet.
 - c. Multifamily Converted ADUs: At least one ADU and not more than 25 percent of the existing number of multifamily dwelling units within an existing multifamily dwelling with the following conditions:
 - i. The ADU(s) are within the portions of an existing multifamily dwelling structure that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.
 - d. Multifamily Detached ADUs with Existing Multifamily Dwelling: At least one and not more than eight detached ADU(s) on a lot with an existing multifamily dwelling if the total number of detached ADUs do not to exceed the total number of existing units with the following conditions:
 - i. The height of detached ADU(s) approved under this subsection shall not exceed 18 feet.
 - ii. Construction of the ADU(s) does not result in side or rear yard setbacks of less than 4 feet.
 - iii. If the existing multifamily dwelling has a rear or side setback of less than four feet, any modification of the existing multifamily dwelling will not be a required condition of approving the application to construct a qualifying ADU.
 - e. Multifamily Detached ADUs with Proposed Multifamily Dwelling: At least one and not more than two detached ADU(s) on a lot with a proposed multifamily dwelling with the following conditions:
 - i. The height of detached ADU(s) approved under this subsection shall not exceed 25 feet.
 - ii. Construction of the ADU(s) does not result in side or rear yard setbacks of less than 4 feet.
2. Ministerial approval of any ADU will be subject to the following conditions:
- a. No additional development standards such as maximum square footage, height, lot coverage, and setbacks are required if an existing and permitted detached or attached accessory structure is being converted into an ADU. Any new addition to the ADU must comply with the setbacks and height regulations outlined by this ordinance.

- b. The installation of fire sprinklers shall not be required in an ADU if sprinklers are not required for the primary residence. The construction of an ADU shall not trigger a requirement for fire sprinklers to be installed in the existing multifamily dwelling.
 - c. Any ADU approved in accordance with this subsection shall not be rented for a term of less than 31 days.
 - d. ADUs on any parcel that utilizes an onsite wastewater treatment system (OWTS) and/or water well must comply with requirements established by the County of San Diego Department of Environmental Health and Quality (DEHQ). An ADU that needs to connect to an OWTS will not be approved under this subsection unless approval has been granted by the DEHQ indicating that the OWTS for both the existing residence and proposed ADU meet all current local and State requirements for an OWTS. If the existing OWTS is not adequate for the project, then the OWTS may be upgraded and/or the number of bedrooms may be reduced to meet the wastewater demands of the property.
 - e. The correction of existing nonconforming zoning conditions is not a condition for ministerial approval of a permit application for the creation of an ADU or JADU.
3. Ministerial approval of any JADU will be subject to the following conditions:
- a. A deed restriction shall be recorded with the County Recorder's office, which shall include the pertinent restrictions and limitations of a JADU unit identified in this Section.
 - i. The JADU shall not be sold separately from the primary residence;
 - ii. The JADU is restricted to the maximum size allowed per the development standards;
 - iii. The JADU shall be considered legal only so long as either the primary residence, or the ADU, is occupied by the owner of record of the property, except when the home is owned by an agency such as a land trust or housing organization in an effort to create affordable housing;
 - iv. The restrictions shall be binding upon any successor in ownership of the property and lack of compliance with this provision may result in legal action against the property owner, including revocation of any right to maintain a JADU on the property.
 - b. The JADU must be completely contained within an existing or proposed primary residence and its enclosed spaces which may include an attached garage.
 - c. An entrance to the JADU that is separate from the main entrance to the primary residence is required.
 - d. The JADU may include separate sanitation facilities or may share sanitation facilities with the existing structure.
 - e. In instances where the JADU shares a bathroom with the primary residence, interior entry to the primary residence is required.
 - f. The JADU shall include an efficiency kitchen, which shall include all the following:

- i. A cooking facility with appliances.
- ii. A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit
- g. If a JADU is to be attached to an ADU, ministerial review is unavailable.
- h. When an existing garage, carport, or covered parking space is being demolished in conjunction with the construction of a JADU or converted into a JADU, any required off-street parking spaces for the lot must be replaced.
- i. No additional parking space is required for a JADU.
- j. JADUs, and/or additions for JADUs must comply with main building setbacks, including JADU additions for non-conforming primary residences. Please see Section 6886 of the Zoning Ordinance for setback information on non-conforming single-family dwellings.
- k. The JADU shall not be rented for a term of less than 31 days, and is not intended for sale separate from the primary residence. Compliance with the owner-occupancy requirements of the deed restriction is required.

C. Sale of ADUs for or by a Nonprofit. Sale or conveyance of ADUs separate from the primary residence to a qualified buyer of low or moderate income, in accordance with California Law Government Code Sections 66340 and 66341, shall be allowed if all of the following apply:

1. The accessory dwelling unit or the primary dwelling was built or developed by a qualified nonprofit corporation.
2. There is an enforceable restriction on the use of the land pursuant to a recorded contract between the qualified buyer and the qualified nonprofit corporation that satisfies all of the requirements specified in paragraph (10) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code.
3. The property is held pursuant to a recorded tenancy in common agreement that includes all of the following:
 - a. The agreement allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling that each qualified buyer occupies.
 - b. A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the ADU or primary dwelling if the buyer desires to sell or convey the property.
 - c. A requirement that the qualified buyer occupy the ADU or primary dwelling as the buyer's principal residence.
 - d. Affordability restrictions on the sale and conveyance of the ADU or primary dwelling that ensure the ADU and primary dwelling will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.
 - e. The tenancy in common agreement shall also include all of the following:
 - i. Delineation of all areas of the property that are for the exclusive use of a cotenant. Each cotenant shall agree not to claim a right of occupancy to an

area delineated for the exclusive use of another cotenant, provided that the latter cotenant's obligations to each of the other cotenants have been satisfied.

- ii. Delineation of each cotenant's responsibility for the costs of taxes, insurance, utilities, general maintenance and repair, improvements, and any other costs, obligations, or liabilities associated with the property. This delineation shall only be binding on the parties to the agreement and their successors, and shall not supersede or obviate the liability, whether joint and several or otherwise, of the parties for any cost, obligation, or liability associated with the property where such liability is otherwise established by law or by agreement with a third party.
 - iii. Procedures for dispute resolution among the parties before resorting to legal action.
4. A grant deed naming the grantor, grantee, and describing the property interests being transferred shall be recorded in 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.
 5. If requested by a utility providing service to the primary residence, the ADU has a separate water, sewer, or electrical connection to that utility.

[\[The Board will vote on the adoption of AB 1033, resulting in the addition or removal of the section below.\]](#)

D. ADUs Sold as Condominiums. Separate sale or conveyance of ADU(s) and the primary residence as condominiums shall be allowed if all of the following apply:

1. The condominiums shall be created pursuant to the Davis-Stirling Common Interest Development Act (Part 5 [commencing with Section 4000] of Division 4 of the Civil Code).
2. The condominiums shall be created in conformance with all applicable objective requirements of the Subdivision Map Act (Division 2 [commencing with Section 66410]), the County Code of Regulatory Ordinances related to the subdivision of land, and the County zoning ordinance Section 6156.x.

[\[The Board will have an option to direct one, both or none of the options below. Alternatively, the Board may choose not to include the local criteria option below, and adopt AB 1033 as defined by State Code, without the addition of any local criteria.\]](#)

3. Option 2.a - Detached ADUs Only

[The ADU is detached from the primary structure. Separate sale of ADUs as condominiums will not apply to ADUs that are attached to the primary structure. If the ADU is attached to an accessory structure \(such as a detached garage or garages\), the ADU and all or a portion of the attached accessory structure may be sold or conveyed together as one condominium](#)

unit. If an ADU is attached to the primary dwelling structure, the ADU and the primary dwelling must be sold or conveyed together as one condominium unit.

3. Option 2.b - New Construction Only

The condominium units and common areas were mapped prior to the construction commencement of the ADU/s that are to be sold separately. Separate sale of ADU/s as condominiums will apply to new development only, and not to ADU/s existing prior to condominium mapping.

4. Before recordation of the subdivision map or condominium plan, the property owner or applicant shall submit to Planning and Development Services proof that final inspection of the ADU was conducted as evidenced either through a certificate of occupancy from the County or a housing quality standards report from a building inspector certified by the United States Department of Housing and Urban Development.
5. **Lienholder Consent.** (1) Neither a subdivision map nor a condominium plan shall be recorded with the County Recorder without each lienholder's consent. The following shall apply to the consent of a lienholder:

- a. A lienholder may refuse to give consent.
- b. A lienholder may consent provided that any terms and conditions required by the lienholder are satisfied.

(2) Prior to recordation of the initial or any subsequent modifications to the condominium plan, written evidence of the lienholder's consent shall be provided to the County Recorder along with a signed statement from each lienholder that states as follows:

"(Name of lienholder) hereby consents to the recording of this condominium plan in their sole and absolute discretion and the borrower has or will satisfy any additional terms and conditions the lienholder may have."

(3) The lienholder's consent shall be included on the condominium plan or a separate form attached to the condominium plan that includes the following information:

- i. The lienholder's signature.
 - ii. The name of the record owner or ground lessee.
 - iii. The legal description of the real property.
 - iv. The identities of all parties with an interest in the real property as reflected in the real property records.
 - v. The lienholder's consent shall be recorded in the office of the County Recorder.
6. The County shall include the following notice to consumers on any ADU or JADU submittal checklist or public information issued describing requirements and permitting for ADUs, including as standard condition of any ADU building permit or condominium plan approval:

"NOTICE: If you are considering establishing your primary dwelling unit and accessory dwelling unit as a condominium, please ensure that your building permitting agency allows this practice. If you decide to establish your primary dwelling unit and accessory dwelling unit as a condominium, your condominium

plan or any future modifications to the condominium plan must be recorded with the County Recorder. Prior to recordation or modification of your subdivision map and condominium plan, any lienholder with a lien on your title must provide a form of written consent either on the condominium plan, or on the lienholder's consent form attached to the condominium plan, with text that clearly states that the lender approves recordation of the condominium plan and that you have satisfied their terms and conditions, if any.

In order to secure lender consent, you may be required to follow additional lender requirements, which may include, but are not limited to, one or more of the following:

- i. Paying off your current lender.

You may pay off your mortgage and any liens through a refinance or a new loan. Be aware that refinancing or using a new loan may result in changes to your interest rate or tax basis. Also, be aware that any subsequent modification to your subdivision map or condominium plan must also be consented to by your lender, which consent may be denied.

- ii. Securing your lender's approval of a modification to their loan collateral due to the change of your current property legal description into one or more condominium parcels.
- iii. Securing your lender's consent to the details of any construction loan or ground lease.

This may include a copy of the improvement contract entered in good faith with a licensed contractor, evidence that the record owner or ground lessee has the funds to complete the work, and a signed statement made by the record owner or ground lessor that the information in the consent above is true and correct.”

7. **Notification to Utility Providers.** Applicants seeking to file a parcel map or final map for the creation of a condominium must notify providers of utilities, including water, sewer, gas, and electricity, of the condominium creation and separate conveyance.
8. **Septic System and Water Well Requirements.** Prior to approval by Planning and Development Services for the creation of a condominium, for any parcel that utilizes a water well and/or an onsite wastewater treatment system (OWTS)—including those proposing to allow for the separate sale of an ADU—applicants must obtain approval from the County of San Diego Department of Environmental Health and Quality (DEHQ) and meet the standards set forth by Health and Safety Code, County Code of Regulatory Ordinances, and the San Diego Regional Water Quality Control Board.
9. **Fire Safety Requirements.** (1) Before a condo map establishing an ADU as a condominium under this section may be recorded, the applicant must provide documentation of

concurrence from the associated local fire district agency. The associated local fire district agency may require a secondary access if the ADU is located on a road that exceeds the maximum dead-end fire apparatus road length at the agency's discretion.

(2) Setbacks in High Fire Risk Areas may be expanded to between 30 and 100 feet from any wildland urban interface (WUI) boundary, at the discretion of the local fire district agency.

(3) Any easements that are in place must be designated as shared space identified on the condominium map and not assigned to any single unit. Access to any condo through any easement must remain unobstructed and maintained by the HOA.

10. **Written Authorization for ADUs in Planned Developments.** (1) The owner of a property or a separate interest within an existing planned development that has an existing association, as defined in Section 4080 of the Civil Code, shall not record a condominium plan to create a common interest development under Section 4100 of the Civil Code without the express written authorization by the existing association.

(2) For purposes of this subdivision, written authorization by the existing association means approval by the board at a duly noticed board meeting, as defined in Section 4090 of the Civil Code, and if needed pursuant to the existing association's governing documents, membership approval of the existing association.

[The Board may choose to direct the local criteria option below. Alternatively, the Board may choose not to include the local criteria option below, and adopt AB 1033 as defined by State Code, without the addition of any local criteria.]

Option 1 – Right of First Refusal

11. Each condominium owner must establish a Right of First Refusal (ROFR) contract with an active rent paying tenant or a condominium owner occupant on the same lot, to be effective only while the affiliated occupancy on the lot is active, and to be reestablished with another occupant if the original ROFR holder is no longer applicable. Before a condominium owner accepts a purchase offer, written notice of the offer must be provided to the ROFR holder, who shall have 60 days in which to execute a sales agreement which matches the original offer.

**Draft Ordinance Amending the
San Diego County Zoning Ordinance
Related to Accessory Dwelling Unit (ADU)
and
Junior Accessory Dwelling Unit (JADU)
Part Eight: Village Regulations:
Section 8900 Alpine Village Core Regulations
Table AL-1.0 Permitted Use Types
(Underline Copy)**

County Zoning Ordinance Section 8900 Alpine Village Core Regulations

TABLE AL-1.0 PERMITTED USE TYPES

RESIDENTIAL	AL-V1	AL-V2	AL-CD
Second Dwelling Unit	<u>R</u>	R	<u>R</u>
Family Residential	R	R	R
Farm Labor Camps			
Group Residential Mobile	R	R	R
Home Residential	M		
Low Barrier Navigation Centers	R	R	R

APPROVED AS TO FORM AND LEGALITY

Damon M. Brown, County Counsel

BY: Jerod Markley, Supervising Deputy County Counsel