

From: [CLK City Clerk](#)
To: [Berry, Jennifer](#); [Councilmember Jennifer Campbell](#); [CouncilMember Joe LaCava](#); [CouncilMember Marni von Wilpert](#); [CouncilMember Raul Campillo](#); [CouncilMember Sean Elo-Rivera](#); [Councilmember Stephen Whitburn](#); [Dominguez, Heder](#); [Fernandez, Mary](#); [FitzGerald, Leslie](#); [CouncilMember Henry Foster](#); [Foster III, Henry](#); [Fuentes, Diana](#); [Gloria, Todd](#); [Garland, Michelle](#); [Hermann, Jaclyn](#); [Irvin, Linda](#); [Jordan, Jean](#); [CouncilMember Kent Lee](#); [Lee, Kent](#); [Medina, Krystell](#); [Councilmember Vivian Moreno](#); [Patterson, Constance](#); [Ramirez-Ortiz, Lorraine](#); [Rogers, Jadera](#); [Romero, Cassandra](#); [Ross, Monique](#); [Sanchez, Gilberto](#); [Soria-Flores, Yahaira](#); [Tecson, Cynthia](#); [Villegas, Elsa](#)
Subject: FW: [EXTERNAL] Re: Mar. 4, 2025 city council, Item S507 - Comment (CORRECTED) re Repeal of Ordinance O-21254 (ADU Bonus Program)
Date: Monday, March 3, 2025 4:36:18 PM
Attachments: [ADU Comment Letter CORRECTED \(final\) 3-3-25 w Attachments.pdf](#)
[image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

Hello,

Please see attached comment in accordance with California Government Code for late arriving materials.

In order to maintain the integrity of communication relating to items docketed for Council consideration (seeming duplicates may, in fact, contain corrected, revised or additional information) we make no attempt to identify or remove duplicates. Thank you.

All my best,

Daichi Pantaleon

Assistant City Clerk
City of San Diego
Office of the City Clerk



T (619) 236-6087
dpantaleon@sandiego.gov

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From: Craig Sherman <craigshermanapc@gmail.com>

Sent: Monday, March 3, 2025 4:19 PM

To: CLK City Clerk <CityClerk@san diego.gov>; CouncilMember Joe LaCava <JoeLaCava@san diego.gov>; Councilmember Jennifer Campbell <JenniferCampbell@san diego.gov>; Councilmember Stephen Whitburn <StephenWhitburn@san diego.gov>; CouncilMember Henry Foster <HenryFoster@san diego.gov>; CouncilMember Marni von Wilpert <MarnivonWilpert@san diego.gov>; CouncilMember Kent Lee <KentLee@san diego.gov>; CouncilMember Raul Campillo <RaulCampillo@san diego.gov>; Councilmember Vivian Moreno <VivianMoreno@san diego.gov>; CouncilMember Sean Elo-Rivera <SeanEloRivera@san diego.gov>
Cc: Jeffrey Anson <jeffreyansond@gmail.com>; Chollas Valley CPG <chollasvalleycpg@gmail.com>; Andrea Hetheru <ahetheru@gmail.com>; Robert Campbell <robert.campbell.encanto@gmail.com>
Subject: [EXTERNAL] Re: Mar. 4, 2025 city council, Item S507 - Comment (CORRECTED) re Repeal of Ordinance O-21254 (ADU Bonus Program)

****This email came from an external source. Be cautious about clicking on any links in this email or opening attachments.****

Please find attached a CORRECTED letter from the one sent earlier today at 3:01 p.m.

-Craig

Craig A. Sherman, Attorney



1901 First Avenue, Suite 219

San Diego, CA 92101

CraigShermanAPC@gmail.com

Tel 619-702-7892 | Fax 619-702-9291

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On Mon, Mar 3, 2025 at 3:01 PM Craig Sherman <craigshermanapc@gmail.com> wrote:

|

On behalf of the Chollas Valley Community Planning Group, please submit into the record and distribute to appropriate staff and decision-makers, the attached Comment Letter supporting repeal of the ADU Bonus Program.

Please confirm receipt and let me know if you have any concerns or problems downloading or managing the attached file(s).

Thank you.

Craig A. Sherman, Attorney



1901 First Avenue, Suite 219

San Diego, CA 92101

CraigShermanAPC@gmail.com

Tel 619-702-7892 | Fax 619-702-9291

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A Professional Law Corporation

1901 FIRST AVENUE, SUITE 219

SAN DIEGO, CA 92101

CraigShermanAPC@gmail.com

TELEPHONE
(619) 702-7892

FACSIMILE
(619) 702-9291

March 3, 2025
(corrected)

Via Email

cityclerk@sandiego.gov

City of San Diego, City Council
c/o Diana J.S. Fuentes, Interim City Clerk
202 C St., Second Floor
San Diego, CA 92101

Re: *Support for the Repeal of Ordinance O-21254 (Oct. 30, 2020)
Accessory Dwelling Unit Bonus Program (ADU Bonus Program)
SDMC Chapter 14, Article 1, Division 3 (Section 141.0302)
March 4, 2025, City Council, Agenda Item No. S507*

To the Honorable City Council President Joe LaCava and Members of the
San Diego City Council:

This office has been hired by and represents the Chollas Valley Community Planning Group
("CVCPG").

This comment letter **supports** the repeal of the ADU Bonus Program. As noted in the Staff Report, "concerns have been raised regarding the ADU Bonus Program's impact on density, neighborhood character, infrastructure capacity, and public safety." (Id. at p. 1.) CVCPG supports further references and findings in the Staff Report that the ADU Bonus Program does not mitigate other impacts related to fire safety¹, emergency access, poor lot design and resource management and prevents City from collecting Development Impact Fees ("DIF") which are needed for infrastructure improvements. (Id.)

CVCPG recommends that City Council direct staff to (1) set forth language that will implement an immediate moratorium on the ADU Density program and its eventual repeal, and (2) consider and propose appropriate findings for repeal of the ADU Bonus Program reflective of the concerns of City Council and as identified in this comment letter.

RECOMMENDATION: That City Council recognizes and finds that the ADU Bonus Program presents and perpetuates inequitable development practices that likely violate state and federal Fair Housing laws, constitutional protections of Equal Protection and Due Process, access under the Americans with Disabilities Act and further conflicts with Equity and Environmental Justice Elements of the City's General Plan.

¹ See January 30, 2025 Community Planners Committee (CPC) Letter regarding fire safety concerns. (Attachment 1)

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Support for Repeal of ADU Bonus Program

A. ADU Bonus Program Results in Unfair Housing Practices

As part of its housing element, the City of San Diego (“City”) is required to “Promote and affirmatively further fair housing opportunities and promote housing throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability” or other characteristics protected by the California Fair Employment and Housing Act and any other state and federal fair housing and planning law. (Gov. Code § 65583, subd. (c)(5).)

The Fair Housing Act (“FHA”) (42 U.S.C. § 3601 et seq.) and California Fair Employment and Housing Act (“FEHA”) (Gov. Code § 12900 et seq.), prohibits discrimination in housing policies and practices. This includes ordinances such as the ADU Bonus Program that may have a disparate impact on protected classes. (*Sisemore v. Master Fin., Inc.*, (2007) 151 Cal.App.4th 1386, 1423.)

A disparate impact does not require a discriminatory intent or motive, rather it is based on a finding or showing of a “disproportionately adverse effect on minorities [or other protected class]” that is not justified by a legitimate rationale. (*Texas Dep’t of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, (2015) 576 U.S. 519, 524.) “A practice has a discriminatory effect where it actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin.” (24 C.F.R. § 100.500.)

A disparate impact is established when a facially neutral practice causes a disproportionate adverse impact on a protected class. (*Darensburg v. Metro. Transp. Comm’n*, (9th Cir. 2011) 636 F.3d 511, 519; *see also Villafana v. Cnty. of San Diego*, (2020) 57 Cal.App.5th 1012, 1018.) CVCPCG supports the repeal of the ADU Bonus Program because it is a program that is having, or facially presents, a discriminatory effect and there are less discriminatory alternatives. (*Id.*)

For a number of reasons, the ADU Bonus Program has a disparate impact on protected classes, including race, color, family status or national origin. (Gov. Code § 65583, subd. (c)(5); 24 C.F.R. § 100.500.) Protected classes often intersect with lower socioeconomic factors such that a discriminatory effect against low-income groups may have a disparate impact on protected classes.

1. The Bonus ADU Program Does Not Encourage Affordable Housing

California State ADU legislation is in line with the concept of property owners utilizing additional space on existing lots for ADUs or JADUs that increase housing stock without concentrated impacts on the surrounding area. Standing on its own as an anomaly among all other cities in this state, City’s Bonus ADU Program varies dramatically from this intent by

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incentivizing maximum ADUs per lot at the expense of low-income families. Because ADUs cannot generally be sold separately from the main residence (San Diego Municipal Code “SDMC” §141.0302, (c)(1)(B)), it essentially transforms single-family properties into high density small square footage rental hubs.

The ADU Bonus Program grants 1 market rate unit per each deed restricted unit, with rates affordable for *moderate income* households with 15-year deed restrictions and rates affordable to *very low income* and *low income* households with a 10-year deed restriction. (SDMC §141.0302, (c)(2)(H).) City has attempted to incentivize rents to very low or low income by lowering deed restrictions from 15 to 10 years for the ADU Bonus Program (SDMC §141.0302, (c)(2)(H).) However, developers utilizing the ADU Bonus Program are apparently not interested in providing housing to *very low* or *low income* households, with reports from CBS 8 San Diego as of April 4, 2024 that there have not been ANY ADU’s under the bonus program at those rates.² According to that same report, the *moderate income* rents that make up all or nearly all of ADU rentals are \$2,570 per month. This amount is consistent with the County of San Diego area median income of \$119,500 for 2024³ and the calculation of rent found in SDMC Table 141-03A.

2. The Bonus ADU Program Has a Disparate Impact

There already exist large disparities in home ownership between white households and minority households, that even if it produced significantly greater numbers of housing for people of low and very low income would situate them in pockets of poverty in high resource areas and exacerbate the concentrations of poverty over cast areas to which minorities have been relegated historically and currently.

The City of San Diego has now become infamous for fly by night development with the only goal of maximizing the number of units for investment purposes with investment video presenters eagerly touting 20+ units of 300-600 square feet on single family residential lots and calculating the potential for rental income with minimal lip service to increasing housing supplies.⁴ This is no surprise, as the minimum gross floor area of an ADU is only 150 square feet. (SDMC § 141.0302, subd. (c)(2)(F).)

² CBS 8 San Diego, April 4, 2024, available at

<https://www.youtube.com/watch?v=eSNjxsuYkaU>, last accessed March 2, 2025.

³ San Diego County Area Median Income (AMI) and Income Chart for 2024, available at [Limitshttps://www.sandiegocounty.gov/content/sdc/sdhcd/rental-assistance/income-limits-ami.html?utm_source=chatgpt.com](https://www.sandiegocounty.gov/content/sdc/sdhcd/rental-assistance/income-limits-ami.html?utm_source=chatgpt.com), last accessed March 2, 2025.

⁴ See e.g. <https://www.youtube.com/watch?v=KPTfc6KivqA>,
<https://www.youtube.com/watch?v=ugwGkR-yESs>,
<https://www.youtube.com/watch?v=L72MJCNIki0&t=1639s>

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It was in San Diego that an infamous “poor-door” development, that denied equal access to low-income tenants to the same entrance, amenities, and benefits of market rate tenants,⁵ that spurred reforms in Assembly Bill AB 491 to protect lower income households in mixed-income development. (Health and Safety Code § 17929.) This change required that for mixed-income development that the occupants of affordable housing units had the same access to common entrances and common areas and amenities. (Id.)

The ADU Bonus Program, rather than create equal access and amenities, exacerbates unequal neighborhoods, without the same statutory protections as in traditional affordable housing developments.

The ADU Bonus Program should apply to high and highest resource neighborhoods only to effect truly inclusive communities throughout the city. While 61% of the city of San Diego is high and highest resource as defined by the state of California's TAC/HCD, only 21% of the ADU's built through the Bonus Density program are in these high resource neighborhoods. This, expectedly has a disparate impact on persons of protected classes.

On one hand, Bonus ADUs are setting a floor at *moderate income* rents well in excess of available rents to low and very low-income families. On the other hand, the financial incentives for developers **removes existing single family residence stock** and hinders first time home buyers because of increased competition and price. As previously mentioned on page 2, there already exist large disparities in home ownership between white households and minority households. The U.S. department of treasury notes that:

The benefits from homeownership have not been shared equally. In the second quarter of 2022, the homeownership rate for white households was 75 percent compared to 45 percent for Black households, 48 percent for Hispanic households, and 57 percent for non-Hispanic households of any other race.[⁶]

3. The ADU Bonus Program Is Likely Discriminatory Under State Planning and Zoning Law

City must comply with duties under Government Code section 65008, the FHA, and the FEHA and has an affirmative duty to further fair housing under Government Code section 8899.50. (*See e.g. Martinez v. City of Clovis*, (2023) 90 Cal.App.5th 193, 221.) The ADU Bonus Program creates an artificial barrier to housing by inflating the price of existing lots (generally in single family zones) and precluding upward mobility of lower income groups that are disparately minority and especially African Americans from home ownership, while at the same time

⁵ Los Angeles Times, Philip Molnar, “Developer of ‘poor door’ apartment building in San Diego threatens legal action over denial”, dated January 16, 2020, available at <https://www.latimes.com/california/story/2020-01-16/developer-of-poor-door-apartment-building-in-san-di-threatens-legal-action-over-denial>, last accessed March 2, 2025.

⁶ U.S. Department of Treasury, available at <https://home.treasury.gov/news/featured-stories/racial-differences-in-economic-security-housing>, last accessed March 2, 2025.

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not even providing alternative *very low* or *low income* housing. (See *Inclusive Communities, supra*, at p. 540 [the “heartland” of disparate impact claims under the FHA as “targeting artificial barriers to housing.”].) By denying or otherwise making housing unavailable, the ADU Bonus Program is discriminatory. (See 42 U.S.C. § 3604(a); *Inclusive Communities, supra*, at p. 539; 42 U.S.C. § 3601.)

The ADU Bonus Program prevents opportunities to develop very low- and low-income housing that has an adverse and disparate impact on people of certain ethnicities and color and therefore cause disparate impacts that are predictable, statistically significant, and did not occur by chance. (*Martinez v. City of Clovis, supra*, 90 Cal.App.5th at pp. 252-253.) Demonstrative segregation effects to the Encanto community supports a likely finding of discriminatory effect from the ADU Bonus Program. (*Id.* at p. 257.) This is because persons of protected classes are disproportionately located in Encanto. However, by no means, does this letter support the continued segregation of racial and ethnic minorities or other protected classes.

The disparate impacts of the ADU Bonus Program include the loss of DIF funds for infrastructure in already under-served areas with high numbers of people in protected classes. Public infrastructure in impacted areas suffers because of a lack of control or requirements for upgrades to strained stormwater infrastructure, the heat-island effect due to the increase of concrete in areas that already suffer an inequitable burden of lack of greenspace, and the lack of emergency resources, and specifically fire evacuation resources from the acknowledged danger in very high fire hazard zones.

B. Equity and Environmental Justice in City’s General Plan

The Environmental Justice Element (“EJ Element”) of the General Plan is “critical in addressing and rectifying [] imbalances” that impact environmental justice impacted communities “EJ Communities” (General Plan, EJ Element, EJ-15.) Goals, objectives, policies of the EJ Element include the following: Inclusive Public Engagement in City Decisions; Promoting Healthy Food Access; Safe and Healthy Homes; Climate Change and Resilience; and Public Facilities and Infrastructure Prioritization. (EJ-16.)

As was previously brought to the attention of the members of City Council by the City planning groups’ Community Planning Committee on or about September 30, 2024, much of southeastern San Diego was “redlined” in historical maps. (Attachment 2.) Redlining and other discriminatory housing practices were the impetus of the FHA and subsequent acts to “combat housing discrimination, eliminate racial bias, undo historic patterns of segregation, and lift barriers that restrict access to foster inclusive communities and achieve racial equity, fair housing choice, and opportunity for all Americans.” (*Id.*) The CPC further noted that redlined maps from 1936 are nearly identical to current socio-economic maps today (with limited exceptions). (*Id.*) Further, it remains clear that discrimination is not caused by private prejudice alone, but governmental decisions, whether overtly intentional, or not continued to propagate discriminatory outcomes.

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Encanto and other areas continue to face segregation barriers that the EJ Element is intended to address. Policies EJ-A.1 to EJ-A.4 are intended to reduce barriers, increase participation that reflects local demographics and make decisions more transparent. However, since ADU's are ministerially approved, and the Bonus ADU Program permits significant apartmentlike density, it conflicts with these policies of the EJ element and further undermines public trust and confidence in underserved communities. Notably, the ADU bonus Density program far exceeds what was expected by the state of California's ADU legislation on ministerial construction, as explained in the Attachment A comparison chart between State Law versus the ADU Bonus Program in the backup materials. The lack of a CEQA mandated EIR further undermines the public trust for citizens in underserved areas. The ADU Bonus Program further interferes with EJ-D.2 to EJ.D4 because concentration of large ADU Bonus Projects interferes with space for urban agriculture, enhanced physical, mental, and social health, and the inclusion of local markets and grocery.

The danger of economic displacement and gentrification is noted in the EJ Element. (*See Figure EJ-15 Gentrification & Displacement Risk.*) As discussed above, the ADU Bonus Program puts pressure both on rental stock, by reducing the availability of constructing very low or low income affordable housing, and by reducing the ability of persons of color from obtaining homeownership because of investment pressure unique to San Diego for residential properties.

Finally, EJ Communities have generally experienced lower levels of public infrastructure and development. The ADU Bonus Program permits an uncapped number of units in sustainable development areas ("SDA") that in many cases assumes future transportation infrastructure that is not realistic or reasonable in EJ Communities, with residents more reliant on vehicle use and LESS access THAN areas that historically have enjoyed greater infrastructure investment. The ADU Bonus Program is inconsistent with policies EJ-G.1 to EJ-G.4 for these reasons.

Under the Americans with Disabilities Act ("ADA"), public infrastructure such as sidewalks are normal functions of City and therefore a "program." (*Barden v. City of Sacramento*, (9th Cir. 2002) 292 F.3d 1073, 1076.) Areas in traditionally disadvantaged neighborhoods such as Encanto generally have poor infrastructure, including many sections without curbs, sidewalks, and avenues of safe travel. Because City and other ADU development generally does not have parking requirements, the ADU Bonus Program permits significant density development forcing vehicles onto the street, impeding and causing specific dangers to mobility challenged persons who have to navigate on unpaved areas who will be forced into the street. Such an effect is inconsistent with the EJ Element and implicate violation of ADA protections.

C. Conclusion

Equity in housing are not attainable unless the City, as a whole, confronts the legacy of zoning and land use policies that have created, permitted, or reinforced discriminatory divides. To move forward toward a truly inclusive framework, City must openly recognize and remediate ordinances such as the ADU Bonus Program to address all of its disparate impacts and effects.

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CVCPG recommends that staff consider the facts and law presented in this comment letter when considering proposed findings and reasons for repeal of the ADU Bonus Program that has unfairly escalated and expanded the state ADU/JADU laws and program.

Should you have any questions or would like this letter, references, or attachments in any other form, please do not hesitate to contact my office.

Sincerely,



Craig A. Sherman

Attachments (x2)

cc:

Joe LaCava, Councilmember District 1 (JoeLaCava@sandiego.gov)
Jennifer Campbell, Councilmember District 2 (JenniferCampbell@sandiego.gov)
Stephen Whitburn, Councilmember District 3 (StephenWhitburn@sandiego.gov)
David Foster III, Councilmember District 4 (henryfoster@sandiego.gov)
Marni Von Wilpert, Councilmember District 5 (MarnivonWilpert@sandiego.gov)
Kent Lee, Councilmember District 6 (KentLee@sandiego.gov)
Raul Campillo, Councilmember District 7 (RaulCampillo@sandiego.gov)
Vivian Moreno, Councilmember District 8 (VivianMoreno@sandiego.gov)
Sean Elo-Rivera, Councilmember District 9 (SeanEloRivera@sandiego.gov)

January 30th

TO: Todd Gloria, Mayor of San Diego

CC: Joe LaCava, Councilmember District 1
Jennifer Campbell, Councilmember District 2
Stephen Whitburn, Councilmember District 3
David Foster III, Councilmember District 4
Marni Von Wilpert, Councilmember District 5
Kent Lee, Councilmember District 6
Raul Campillo, Councilmember District 7
Vivian Moreno, Councilmember District 8
Sean Elo-Rivera, Councilmember District 9

RE: Fire Safety

The Palisades and Eaton Fires exposed serious vulnerabilities that are present in San Diego. The four fires that occurred in San Diego this month make it clear the time to act on fire safety is now. The Community Planners Committee (CPC) has grown concerned about the state of development in the Very High Fire Hazard Severity Zones (VHFHSZ). The three main concerns are infill projects, evacuation plans, and brush abatement.

At the January meeting of the CPC many members brought attention to high density ADU projects, meaning four plus ADUs, that are being built abutting canyons and hills. As was seen in the Eaton and Palisades fires, when buildings abutting these topographical features catch fire they quickly spread. This is only compounded by allowing ADUs to be built without setbacks. This should cause serious concerns over First Responders' ability to save structures, and residents to escape safely.

This brought up a lot of questions around planned evacuation routes. Canyons and Hills naturally lend themselves to dead ends and cul-de-sacs. These features trap residents with one road in and one road out, making timely evacuations impossible. Even if infill development is happening without these road features, not enough transportation options have been put in place to off set the newly built density.

Finally, multiple communities stated their Fire Councils have been hamstrung by the City. The primary complaint was that community Fire Councils were being stopped from assisting with brush abatement. With the City's pending budget issues it is fair to be concerned that the City won't have the resources to manage this on its own without community partnerships.

Until these concerns are addressed the CPC requests that all infill projects in VHFHSZs that add more than double the dwelling units to a parcel be halted.

While this moratorium takes place, the CPC would like to work with the Mayor and Council Offices to find compromise on the types of development allowed in VHFHSZ, evacuation routes for all communities abutting such zones, and a partnership between communities and the City for better brush management.

Ignoring these glaring problems will only lead to severe emergencies, where we wished we would have done something sooner. The members of the CPC looks forward to a collaborative effort to address these problems.

Sincerely,

Andrea Schlageter
Chair, Community Planners Committee

September 30th, 2024

TO: Todd Gloria, City of San Diego Mayor
Heidi Vonblum, City Planning Director
Joe LaCava, San Diego City Councilmember D1
Jennifer Campbell, San Diego City Councilmember D2
Stephen Whitburn, San Diego City Councilmember D3
Henry L. Foster III, San Diego City Councilmember D4
Marni Von-Wilpert, San Diego City Councilmember D5
Kent Lee, San Diego City Councilmember D6
Raul Campillo, San Diego City Councilmember D7
Vivian Moreno, San Diego City Councilmember D8
Sean Elo-Rivera, San Diego City Councilmember D9

CC: Kohta Zaiser, Council Affairs Advisor, Mayors Office
Liz Saidkhanian, Development Project Manager, Planning Department

RE: SUPPORT FOR SCRUTINY OF LANGUAGE IN THE SAN DIEGO MUNICIPAL CODE TO ENSURE COMPLIANCE WITH FEDERAL & STATE FAIR HOUSING LAW

We, the members of the Community Planners Committee, urge in the strongest terms that language in the San Diego Municipal Code be immediately scrutinized, as it seems on its face to have the intent and effect of maintaining unlawful housing segregation. This scrutiny should be conducted with the maximum possible speed that is consistent with solving a major local crisis.

The language in question can be found in Footnote 7 for Table 131-04D in the San Diego Municipal Code. This footnote came to the attention of the Chollas Valley (Encanto) Planning Group during a mismanaged appeal process. The planning group was appealing a project that was in clear violation of the zoning in their community plan. This footnote carves out Encanto (now known as Chollas Valley) and Eastern Area which specifically targets these historically underserved communities of color.

A 1936 map of San Diego shows much of southeastern San Diego was “redlined.” These discriminatory housing practices led the federal government to pass the Fair Housing Act (Title VIII) in 1968. The purpose of this legislation was to combat housing discrimination, eliminate racial bias, undo historic patterns of segregation, and lift barriers that restrict access to foster inclusive communities and achieve racial equity, fair housing choice, and opportunity for all Americans. Within Title VIII, the mandate to Affirmatively Further Fair Housing (AFFH) has been, is, and should be recognized.

In 2022, Stephen Russell, executive director of the San Diego Housing Federation, told KPBS that those “redlined” maps are nearly identical to socio-economic maps of San Diego today, with a few exceptions. In the same article, Richard Rothstein, author of *The Color of Law: A Forgotten History of How Our Government Segregated America*, said, “We have a national myth that the racial segregation that still exists in every metropolitan area in the country is created simply by private prejudice, private lending practices, people’s desires to live with others of the same race. This is false.” In fact, this private prejudice has historically been and is currently operationalized by law

throughout the nation. There is more than reasonable cause to believe that a prime example of this exists in the City of San Diego Code:

San Diego Municipal Code, Chapter 13, Table 131-04D, Development Regulations for RS Zones, Footnote (7) states: "In the Encanto and Southeastern San Diego Community Planning areas, the lot size shall be a minimum of 5,000 square feet, and all development regulations of the RS-1-7 zone shall apply to subdivisions."

This excerpt of code, herein referred to as Footnote 7, is limited in scope to two specific community planning areas in San Diego that are historically comprised of redlined neighborhoods. That to this day, continue to primarily consist of nonwhite residents and have been classified by the City as "Communities of Concern." Both planning group areas, encompassing 16 individual neighborhoods, are designated by the state of California as low opportunity, with some parts experiencing high poverty, and almost all meet the state definition for segregation. Footnote 7 targets the RS-1-2 zone as outlined by their Community Plans, and does not apply citywide. No similar footnotes exist for other Community Planning Areas or zones. Footnote 7 effectively nullifies zoning protections without regard for existing Community Plans or the California Environmental Quality Act as it pertains to findings effectuating elements of those community plans. There is more than reasonable cause to believe that Footnote 7 is an act of intentional racial targeting in violation of the Equal Protection clause of the Constitutions of the United States of America and the State of California, prohibitions against racial discrimination in United States Title VIII, and AFFH mandates within Title VIII and the state of California's AB 686 law.

We hold that Footnote 7 perpetuates racial biases in historically segregated communities, Encanto and Southeastern, by limiting residents' access to the same zoning opportunities that predominantly white San Diego neighborhoods enjoy—namely, different density and housing size options which bolster economic opportunity. We urge, in the strongest terms, the immediate removal of Footnote 7 from Table 131-04D. All projects seeking to use Footnote 7 should be put on pause until a determination can be made as to whether this violates Title VIII. We demand, as the law requires, fair housing language in all future municipal code updates.

Sincerely,

Andrea Schlageter
Chair, Community Planners Committee