

Request for County Grand Jury Investigation of San Diego Land Use Governing Practices

The City of San Diego is entrusted with the vital task of overseeing the planning and development within our communities. To this end, the City has several departments and divisions that are responsible for responding to the current and future land use and infrastructure needs of San Diegans.

Civic leadership has a duty to residents of the diverse communities of the City of San Diego that includes responding to input from those communities. This is fully acknowledged by the City in its Equity Forward program. The established communication channel of Community Planning Groups (CPG) organized under Council Policy 600-24 remains valuable and well known by the communities represented. However, the sidelining of the CPGs by the City government with regard to municipal code in areas of engagement, transparency, non-compliance, and lack of oversight, has led to communities being ignored in favor of other, more powerful, interests.

The San Diego County Grand Jury provides the means of redress of grievances for citizens of the county, specifically for the investigation and reporting of the operations, methods, and systems utilized by the City of San Diego to ensure an efficient, effective, and equitable government.

Thus, the undersigned are requesting an investigation of the San Diego City Planning Department, Development Services Department (DSD), and reporting structures that have led to improper project classifications, improper legislation of Municipal Code, and non-compliant communications.

1. Improper Project Classification

Projects have been deemed ministerial by DSD despite being noncompliant with City land use policy, including the Complete Communities Housing Solutions Program and Community Plans. No public input or oversight is included in the determination of projects being ministerial or discretionary. The result is that projects inaccurately approved as ministerial have their qualifications challenged later in court at great expense and delay to the City, the community, and the developer.

1.1 Example: 3488 Adams Ave. AKA Mars Project

The Mars Project mixed use development project was erroneously submitted to DSD under the Complete Communities Housing Solutions Program. The project location at 3488 Adams Ave did not qualify for this program due to being located outside of a Transit Priority Area (TPA)

when originally submitted in 2021, prior to the expansion of TPAs to Sustainable Development Areas (SDA) by the City Council in 2023.

When this fact was brought to the attention of DSD, City Council, and the Mayor's office, the Planning Department corrected an erroneous map that was the root cause of the unqualified submission. Nevertheless, DSD insisted the project still qualified under the Complete Communities program citing the outdated map of TPAs from the Planning Department. This map was known to be in error and had already been corrected to show the property did not qualify for ministerial review by DSD.

When the outdated map was questioned, DSD then used a map contained in the 2015/2019 Regional Transit Plan (RTP) from SANDAG to claim that 1. there were plans in 2015 to run two #11 bus lines on Adams Avenue and 2. this should be interpreted as an "intersection" of two bus lines, thus qualifying the parcel as within a TPA. However DSD's interpretation of the map did not agree with the text of the 2015/2019 RTP.

The use of outdated and incorrectly interpreted maps to justify and brush aside the error led to a civil lawsuit in which DSD produced false written statements to maintain ministerial control of a noncompliant project. Specifically:

1. DSD determined a project to qualify as ministerial by repeatedly referring to maps containing errors or interpreting them in ways that the text of the 2015/2019 Regional Transit Plan (RTP) did not support
2. When challenged on their interpretation of the 2015/2019 Regional Transit Plan (RTP) document, DSD claimed that they had verified their interpretation with SANDAG. However, correspondence obtained through a California Public Records Act request (CPRA) revealed that there was no one left at SANDAG who remembered the details of the plan. When pressed, SANDAG responded that they "guessed" the DSD interpretation could be correct.
3. However, a SANDAG employee revealed privately that only MTS, not SANDAG, decides whether to run additional bus lines. Confronted with this information, DSD contacted MTS. CPRA records of correspondence revealed that MTS indicated there were no circumstances under which they would run the purported second #11 bus line. However DSD chose to ignore this information and insisted that two bus lines were planned and that the project was ministerial.

Interpreting plans from SANDAG and MTS are outside DSD scope of duties and expertise. Due to this series of errors and misrepresentations of fact by the DSD, the dispute escalated to the level of a civil hearing at great cost to the developer, the community, and the city.

1.2 Example: Post Approval Changes

Projects have been allowed to change qualifying criteria after a project is deemed complete without review of the criteria qualifying for density bonuses . These changes include:

1. Reduction in affordable units

2. Height and density increases
3. Modifications to public amenities

1.3 Example: 3238 Emerson Street

Plan submission for PRJ-1043424 added additional height to the project by moving dirt on the parcel to increase the “original grade”. The dirt was subsequently removed during construction to add an extra floor to the building.

2. Improper Legislation of Municipal Code

Queries regarding the efficacy of surveillance and enforcement of land use code arise. Cases of extensive bending of rules and exploitation of loopholes in managing projects that violate regulations necessitate thorough examination to preserve planning judgments and sustain public trust in governmental integrity. The City’s lack of collaboration with, and accountability to, its residents undermines the democratic values inherent in community planning and decision-making processes.

DSD has made decisions that significantly impact communities when municipal code is ambiguous and should be interpreted by City Council. In all of these cases DSD has chosen the loosest possible interpretation of the municipal code favoring the developers who underwrite the DSD budget.

2.1 Example: Application of ADU Density Bonus

The adoption and definition of State Density Bonus Law by the City of San Diego is the purview of the City Council, not the City Planning Department or DSD. The City municipal code regarding Accessory Dwelling Units (ADU) requires deed restricted affordable units to be created in exchange for additional market rate units. The logic of how this is applied matters since distortion of the law directly impacts the quantity of affordable units built and the associated fees the City would collect.

State ADU Law coupled with City’s ADU Bonus Law with a straightforward interpretation:

- ADU 1 - must be allowed, and may be either market rate or deed restricted affordable, if deed restricted a 2nd ADU is allowed, so
- ADU 2 - may be market rate
- ADU 3 - must be deed restricted affordable, if deed restricted, another ADU is allowed, so
- ADU 4 - may be market rate

State ADU Law coupled with City’s ADU Bonus Law as interpreted by DSD

- ADU 1 - must be allowed as market rate
- ADU 2 - must be deed restricted affordable

- ADU 3 - may be market rate if ADU 2 is deed restricted affordable
- ADU 4 - must be deed restricted affordable
- ADU 5 - may be market rate if ADU 4 is deed restricted affordable

3. Non-compliant Communications During Project Review

The Planning Department serves as the contact for CPGs, and DSD plays an equally important role as DSD Project Managers are responsible for sending project information for discretionary review to the appropriate CPG chairs. There have been cases where these plans were not properly delivered.

3.1 Example: Notifications

The 42 Community Planning Groups are chartered to protect the integrity of their communities by reviewing projects for adherence to the appropriate Community Plan and associated Municipal Code. However, the CPGs are routinely denied that opportunity when DSD processes permits under the ever expanding ministerial process.

The ministerial process excludes:

1. Right to appeal the ministerial designation of a project or any component of a ministerial project.
2. Right to review by a hearing officer including non-binding arbitration.
3. Right to expeditious access to plans and documents related to the project including Implementation Guides containing details of Municipal Code not provided to the public.
4. Right to sue for non-compliance with the Environmental Quality Act (CEQA).
5. Notification of project submission or approval to the community including parcels within 300 feet.

The project (PRJ-1061051) planned for 6353 Del Cerro Blvd. in Grantville was to be built under Complete Communities as a ministerial project. The project site was zone CN-1-2 and was to contain 27 units. Efforts to find information about the project to address questions and concerns by the community were thwarted and not even the district council member knew of the project.

3.2 Example: Transparency

Access to submitted plans is restricted by DSD to a 30 min counter appointment where plans may be viewed on a monitor behind plexiglass. Appointments must be booked several months in advance. This “eyes only” access has been defended by arguing the plans are copyrighted. However, copyright should not limit access anymore than the thousands of copyrighted books available at the public library.

The City of Sacramento Planning Department places all plans online for public inspection and has found this leads to a more efficient and expedited process for all involved.

4. Code Enforcement

The lack of code enforcement has led to many municipal code violations both in construction projects and the licensing of Short Term Rental Occupancy (STRO) permits.

4.1 Example: Licensing Violations for Short Term Rental Occupancy

Short-Term Residential Occupancy (STRO) Tier 3 units are whole home rentals for more than 20 days per year where the Host does not reside onsite. STRO are required to be registered and licenced by the City Treasurer.

A Host may only hold one license at a time, and a Host may not operate more than one dwelling unit for STRO at a time within the City of San Diego.

STRO licenses are not transferable and STRO licenses expire two (2) years from the date of issuance and may be renewed.

Quote the code Municipal Code 11.0210 and SDMC Chapter 5, Article 10, Division 2

Despite these clearly defined and published rules, there has been no effort to limit approvals of multiple STRO licenses to single individuals. It is not difficult to find the one case of 82 STRO licenses being issued to a single person where every unit is located in a single zip code.

4.2 Example: 5436 Hewlett Avenue

DSD staff and inspectors do not understand, or won't enforce San Diego's ADU and Housing Affordability Code.

At 5436 Hewlett Avenue, staff did not understand that the state's ADU regulations do not negate other, objective zoning regulations, in this case the maximum of 60% coverage of required front yards with hardscape. Also, DSD did not pair the JADU permits with a state required affidavit testifying that an owner would occupy the unit alongside the separately rented JADU. JADU affidavits are required at the time of permit issuance. The permits were issued and the project was inspected and given its final occupancy permit all without a JADU affidavit being submitted. It took multiple interactions with staff, and re-opening of enforcement cases prematurely closed by staff to educate them that these were violations of code.

4.3 Example: 3419 - 3447 Atlas Estates

At 3419 – 3447 Atlas Estates, DSD staff permitted an 8-parcel project with 8 houses and 24 ADUs which did not fulfill its requirement to provide 8 of those 24 ADUs as Deeded Affordable as mandated by the City's Bonus ADU code.

Data on the project was not reported to the Housing Commission in such a way that Housing Commission staff could identify the actual number and configuration of units permitted so that they could accurately identify the number units required to be recorded as Deeded Affordable.

Additionally, DSD staff believed that the Bonus ADU program allowed for payment of the Inclusionary In Lieu fee (\$147,736) for 7 of the units, as a way to avoid deeding 8 of the ADUs as affordable. This option is not allowed for Bonus ADUs nor for projects under 10 units.

The completed project is renting out 40 units when only 32 units were legally permitted. Of the excess 8 units, 4 are likely to be Guest Quarters which legally can not be rented in San Diego.

This example serves as one of many instances where members of the public must walk DSD staff through multiple sections of code before they will accept that a code violation has occurred. As there are no deterrents for attempting to circumvent the law, applicants are allowed to repeatedly test limits during the entire project at a cost to the City and community..