



THE CITY OF SAN DIEGO

## Report to the Planning Commission

DATE ISSUED: December 10, 2024 REPORT NO. PC-24-061

HEARING DATE: December 19, 2024

SUBJECT: San Diego Municipal Code Amendment to Section 131.0431 Development Regulations Table 131-04D Related to RS-1-2 Zones in the Encanto Neighborhoods and Southeastern San Diego Community Planning Areas; Process 5

### SUMMARY

Issue: Should the Planning Commission recommend City Council approval of the adoption of an amendment to the San Diego Municipal Code (SDMC) Development Regulations for Residential Zones Table 131-04D in section 131.0431 to remove footnote 7, which reduces the minimum lot size for the RS-1-2 zones from 20,000 square feet to 5,000 square feet and applies the development regulations of RS-1-7 zones to subdivisions in the Encanto Neighborhoods and Southeastern San Diego Community Planning Areas?

Proposed Action: Recommend the City Council APPROVE an ordinance to repeal footnote 7 from Table 131-04D, Development Regulations for Residential Zones.

Fiscal Considerations: None

Housing Impact Statement: The proposed development regulation amendment would allow 465 fewer single family dwelling units on lots zoned RS-1-2 within the Encanto Neighborhoods Community Plan Area. The area zoned RS-1-2 is within a low resource area as identified by the California Tax Credit Allocation Committee 2024 Opportunity Map. The Southeastern San Diego Community Planning Area does not have any lots zoned RS-1-2, and there is no change to the development potential in the community.

Community Planning Group Recommendation: On November 18, 2024, the Chollas Valley Community Planning Group (CVCPG) unanimously passed the following motion: (13-0-0) "To have the Mayor issue an executive order that 1) No City Official, department, or subdivision of the City administration approval of any project reliant on footnote 7 - whether past, present, or future and 2) footnote 7 is deemed invalid and without effect."

Community Planners Committee Recommendation: On November 20, 2024, the Community Planners Committee (CPC) unanimously passed (19-0-0) the following motion: Motion to endorse the letter from

the Chollas Valley Community Planning Group (CVCPG) to have the Mayor issue an executive order that 1) No City Official, department, or subdivision of the City administration approval of any project reliant on footnote 7 – whether past, present, or future and 2) Footnote 7 is deemed invalid and without effect.

Environmental Impact: The Environmental Policy Section of the City Planning Department has reviewed the SDMC Amendment to remove footnote 7 from Table 131-04D and conducted a consistency evaluation pursuant to CEQA Guidelines Section 15162 (Attachment 4). Implementation of this project's actions would not result in new significant direct, indirect, or cumulative impacts over and above those disclosed in the Final Environmental Impact Report (EIR) for the Southeastern San Diego and Encanto Neighborhoods Community Plan Updates (SCH No. 20151006), certified by the San Diego City Council on December 2, 2015 (Resolution R-31077).

## BACKGROUND

### Encanto Neighborhoods Community Plan (2015)

On November 16, 2015, the City Council adopted the Encanto Neighborhoods Community Plan. As part of the community plan update process, the City Planning Department conducted extensive community outreach, including workshops and meetings at various locations to create the vision and guiding principles used in crafting each of the community plan elements. A zoning ordinance was approved on December 15, 2015, which replaced planned district, community-specific zones with citywide zones. Areas previously zoned SESDPD-SF-20,000 (Southeastern San Diego Planned District-Single Family-20,000) were rezoned to RS-1-2 (Residential-Single Unit Zone), which required a minimum lot size of 20,000 square feet and allows up to two homes per acre. The RS-1-2 zoned lots have a Residential – Very Low (0-4 dwelling units /acre) community plan land use designation, which allows up to four homes per acre.

### Annual Land Development Code Updates

The SDMC includes the Land Development Code which provides the City's regulations for developing and using property within the City of San Diego. The Land Development Code includes information on zoning, subdivisions, grading, and other related land use activities. In December 1997, the City Council adopted a comprehensive update to the Land Development Code and directed the development of a code monitoring and update process to address changes anticipated as part of implementing the Land Development Code. The City Council recognized the importance of Land Development Code revisions that removed unnecessary barriers to simplify and streamline permitting processes. The City has continually responded to the changing land use and development issues through these regular updates.

Land Development Code Updates streamline the development process, clarify the code, implement state legislation, and align the code with the policies and goals of the General Plan and related documents, ensuring consistency with broader citywide strategies. Land Development Code Updates are classified as a Process Five decision in accordance with SDMC Section 112.0509. Process Five decisions require a Planning Commission public hearing, and at the conclusion of the public hearing, the Planning Commission shall make a written recommendation to the City Council. The City Council has the ultimate decision to adopt the Land Development Code Updates.

### 12th Update (Phase Two) to the Land Development Code (2020)

The City Council approved the 12th Update (Phase 2) to the Land Development Code and Local Coastal Program introducing footnote 7, as Item 335, on the December 17, 2019, City Council agenda. The second

reading of the 12th Code Update (Phase 2) occurred on January 7, 2020. The 12th Code Update (Phase 2) included footnote 7 to Table 131-04D as Item 9 – Development Regulations Table for Residential Zones and classified it as a Regulatory Reform. Footnote 7, as approved, stated: “In the Encanto and Southeastern San Diego Community Planning areas, the lot size shall be a minimum of 5,000 square feet.” This amendment reduced the required minimum lot size in the RS-1-2 zone within the Encanto Neighborhoods and Southeastern San Diego community plan areas from 20,000 square feet to 5,000 square feet. The Southeastern San Diego Community Plan Area does not have any lots zoned RS-1-2.

#### 2021 Land Development Code Update (2022)

The City Council approved the 2021 Land Development Code Update, which amended footnote 7 as Item 204 on the December 13, 2021, City Council agenda. The second reading of the 2021 Land Development Code Update occurred on January 11, 2022. The 2021 Land Development Code included an amendment to footnote 7 as Item 5 - Encanto and Southeastern San Diego (SESD) Development Regulations. The amendment added the following to footnote 7: “. . . and all development regulations of the RS-1-7 zone shall apply to subdivisions.” This amendment applied the development regulations of the RS-1-7 base zone, which includes reduced minimum lot dimensions and setback requirements consistent with a 5,000 square foot minimum lot area.

#### Affirmatively Furthering Fair Housing Background

Several comments regarding fair housing have been made at public hearings and public meetings relating to footnote 7. Government Code Section 8899.50 was codified in 2018, requiring all agencies in California to affirmatively further fair housing. The section defines “Affirmatively furthering fair housing” as taking meaningful actions to address significant disparities in housing needs and access to opportunities. This includes replacing segregated living patterns with truly integrated, balanced communities, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.

#### DISCUSSION

Footnote 7, as added in the 12th Code Update (Phase 2) and amended by the 2021 Land Development Code Update, allows lots in the Encanto Neighborhoods community planning area zoned RS-1-2 to be subdivided into minimum lot sizes of 5,000 square feet, which is the equivalent of 9 dwelling units per acre. A discretionary subdivision is still required in accordance with Chapter 12, Division 5, Article 1 of the San Diego Municipal Code, and that subdivision process necessarily ensures that any proposed new development does not exceed the Community Plan land use density of up to four dwelling units per acre because community plan consistency remains a requirement for subdivisions – even with footnote 7.

Footnote 7 appears to have been introduced to facilitate and match the densities designated in the Encanto Neighborhoods Community Plan and Southeastern San Diego Community Plan. The changes only apply in these two community plan areas even though the Southeastern San Diego Community Plan Area does not have any areas zoned RS-1-2. As such, Footnote 7 only effectively applies to the Encanto Neighborhoods Community Plan.

#### *Proposed Amendment*

The proposed amendment ensures consistent application of development regulations Citywide by

removing footnote 7 from Table 131-04D. Repealing footnote 7 would restore the 20,000 square foot minimum lot size requirement in the RS-1-2 base zone in the Encanto Neighborhoods and Southeastern San Diego Community plan areas consistent with citywide development regulations for the RS-1-2 base zone. The process for a property owner who wishes to subdivide their currently RS-1-2 zoned property would be through a rezoning action.

The proposed amendment to remove footnote 7 would decrease the allowed development potential from 642 dwelling units to 177 dwelling units, which is a difference of 465 total single family homes on lots zoned RS-1-2 within the Encanto Neighborhoods Community Plan Area. This change in development potential was calculated by applying the community plan land use plan density and minimum lot size required with or without footnote 7. The proposed amendment would result in the same development potential assumed with the community plan update. The Southeastern San Diego Community Plan Area does not have any change to the development potential since there are not any lots zoned RS-1-2 in the community.

	<b>With Footnote 7 (Up to 4 dwelling units per acre)</b>	<b>Without Footnote 7 (Up to 2 dwelling units per acre)</b>	<b>Difference</b>
Dwelling Units	642	177	465

Footnote 7 was presented at the Community Planners Committee and during public workshops for both citywide Land Development Code Updates. As a land use decision that only affected two communities, the prior amendments should have been directly discussed with the affected communities and reviewed to determine if footnote 7 should apply Citywide to ensure consistent application of development regulations. However, there is no evidence to suggest it was intentionally racist or designed with discriminatory intent. Although staff recognizes that the amendments tied to footnote 7 were not fully vetted with the affected communities, these regulations were adopted through the City's approved processes and remain applicable until formally amended or repealed. Since the discussion and engagement with the affected community did not occur, the City Planning Department recommends the removal of footnote 7.

It is important to note that although the process by which Footnote 7 was adopted did not represent best planning practices procedurally, it did not lead to outcomes that do not affirmatively further fair housing. Footnote 7 allows additional market-rate, single-family homes in low-resource communities, consistent with planned densities in the Community Plan and does not contradict fair housing principles. Fair housing includes expanding housing opportunities, including more opportunities for home ownership and improving access to resources rather than restricting specific types of housing development.

Municipal Code regulations adopted by the City Council through a publicly noticed process remain in effect and must be enforced and applied until formally amended or repealed by the City Council. Under the City Charter, the legislative authority to adopt or repeal such regulations resides exclusively with the City Council. A mayoral executive order directing staff not to apply these adopted regulations would undermine the City Council's legislative authority, violating the separation of powers outlined in the City Charter, and could constitute an illegal action.

*General Plan Housing Element*

The General Plan Housing Element 2021-2029 Adequate Site Inventory included sites zoned RS-1-2 in the Encanto Neighborhoods Community Planning area. The State requires a city to identify if there are enough remaining sites in the inventory to meet the allocated housing goals if a site identified in an adequate sites inventory is rezoned and that rezone would result in a reduction of housing capacity. These sites were assessed based on the development potential allowed under the RS-1-2 base zone regulations, without considering footnote 7. Removing footnote 7 would not reduce the residential density of any lot identified in the Adequate Sites Inventory below its current allocation toward the regional housing need.

*State Senate Bill 330*

State Senate Bill (SB) 330 (Housing Crisis Act of 2019), as codified in Government Code Section 66300(b)(1)(A), does not allow a city to change the general plan (community plan) land use designation or zoning of a property to a less intensive use or reduce the intensity of land use within an existing land use designation, or zoning below what was allowed under the land use designation and zoning, as in effect on January 1, 2018, in a manner that would result in a net loss of residential capacity. This provision of State Law would not be applicable as footnote 7 was approved on December 17, 2019, and amended on December 13, 2021. The removal of footnote 7 would result in the same intensity of the Encanto Neighborhoods Community Plan land use and zoning that was adopted on November 16, 2015, and in effect on January 1, 2018.

**CONCLUSION**

The City Planning Department recommends the repeal of Footnote 7 for the reasons discussed above. While repealing footnote 7 would lead to a reduction in potential housing development on lots zoned RS-1-2 within the Encanto Neighborhoods Community Plan Area, it does not reduce the City's Housing Element Adequate Sites Inventory and applies the zoning ordinance requirements in effect before January 1, 2018. Additionally, any property owner wishing to subdivide their property into lots smaller than 20,000 square feet has a process available to request a rezone of their property. Therefore, staff recommends the Planning Commission recommend the City Council approve the proposed amendment to repeal footnote 7 from Table 131-04D, Development Regulations for Residential Zones.

Respectfully submitted,

  
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Attachments:

1. Draft Ordinance Amending Section 131.0431
2. Draft Strikeout Ordinance Amending Section 131.0431
3. Chollas Valley Community Planning Group Request for Executive Order Regarding Footnote 7
4. CEQA Guidelines Section 15162 Evaluation