

## **ACCESSORY DWELLING UNIT (ADU) - FREQUENTLY ASKED QUESTIONS (FAQ)**

State of California legislation pertaining to Accessory Dwelling Units (ADUs) went into effect in 2020. Additional legislation changes amended [Government Code Sections 66310-66342](#). In response to these legislative changes, the City of San Marcos updated its Zoning Ordinance to be consistent with State law. This FAQ handout has been created in an effort to effectively answer commonly asked questions regarding ADUs.

### **WHAT IS AN ACCESSORY DWELLING UNIT (ADU)?**

An Accessory Dwelling Unit (ADU) is an independent attached or detached dwelling unit that provides complete living facilities for one or more persons. An ADU must include an independent entrance separate from the primary residence and shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as a single-family, mixed-use, or multifamily dwelling.

### **WHAT IS A JUNIOR ACCESSORY DWELLING UNIT (JADU)?**

A Junior Accessory Dwelling Unit (JADU) is generally smaller than an ADU (no more than 500 square feet) and only allowed in single-family residential zones. A JADU must be contained entirely within an existing or proposed single-family residence. A JADU must include a separate entrance from the single-family residence and shall include permanent provisions for living, sleeping, eating, cooking, and sanitation, though it may share sanitation facilities with the existing or proposed structure through interior access. Either the primary dwelling or the JADU must be owner occupied. The JADU shall comply with the requirements of Article 3 (commencing with Government Code Section 66333).

### **WHERE CAN I BUILD AN ADU OR JADU; WHAT ZONES ARE THEY ALLOWED IN?**

ADUs are allowed on any lot that is zoned for residential use, including single-family, mixed-use residential, multifamily, and lots that are zoned for such use within a Specific Plan Area (SPA). JADUs are only allowed on a lot zoned for single-family residential use, or lots that are zoned for such use within a SPA.

### **IS A PERMIT REQUIRED TO BUILD AN ADU/JADU AND WHAT ARE RELATED CITY FEES?**

A building permit is required for ADUs or JADUs. Plans will need to be prepared by a licensed design professional, such as an architect or engineer, and submitted for review to the City's Building Division. All ADU/JADU projects are subject to Plan Check, Permit Issuance, and possible outside agency fees such as utilities or school districts. ADU projects are also subject to Public Facilities Fees (PFF), unless the ADU is smaller than 750 square feet in size. Fees are specific to the scope of your project, so reach out to a city staff member at the time of application for details.

### **MAY I RENT OR SELL MY ADU OR JADU?**

The ADU or JADU may be rented for terms of 30 days or longer. The ADU may not be sold separately from the primary dwelling unit except when pursuant to Government Code Section 66341. The JADU may not be sold separately. Either the primary dwelling or the JADU must remain owner occupied.



## CAN MY LOCAL HOMEOWNERS ASSOCIATION (HOA) PROHIBIT CONSTRUCTION OF AN ADU OR JADU?

No, HOAs cannot prohibit or unreasonably restricting the construction of ADUs on ADU on a lot where a single-family residential use is allowed. California's Department of Housing and Community Development (HCD) confirms Assembly Bill 670 (2019) and AB 3182 (2020) amended Section 4751, 4740, and 4741 of the Civil Code to preclude common interest developments from prohibiting or unreasonably restricting the construction or use, including the renting or leasing of, an ADU on a lot zoned for single-family residential use. Covenants, conditions and restrictions (CC&Rs) that either effectively prohibit or unreasonably restrict the construction or use of an ADU or JADU on such lots are void and unenforceable or may be liable for actual damages and payment of a civil penalty. Applicants who encounter issues with creating ADUs or JADUs within CC&Rs are encouraged to reach out to HCD for additional guidance. Refer to Section 4100 of the Civil Code for the meaning of a common interest development.

## WHAT IS THE PROCESS TO GET APPROVAL OF AN ADU/JADU?

ADUs and JADUs only require a Building Permit, processed within sixty (60) days of submittal of complete application. The sixty (60) day period is tolled (stopped) when the City sends corrections to applicant, and restarted when the applicant resubmits revised plans. The City shall consider a demolition permit for a detached garage that is to be replaced with an accessory dwelling unit at the same time as the building permit for the ADU. The City shall provide applicants of rejected applications for ADUs and JADUs with a list of deficiencies and how the applications can be brought into compliance. The City shall not require, as a condition for ministerial approval of a permit application for the creation of an ADU or JADU, the correction of nonconforming zoning conditions.

## CITY OF SAN MARCOS MUNICIPAL CODE CHAPTER 20.410 - ACCESSORY DWELLING UNITS AND ACCESSORY STRUCTURES

Please find the City's current ADU Ordinance through the following link:

[https://library.municode.com/ca/san\\_marcos/codes/code\\_of\\_ordinances?nodeId=TIT20ZO\\_CH20.410ACDWUNACST](https://library.municode.com/ca/san_marcos/codes/code_of_ordinances?nodeId=TIT20ZO_CH20.410ACDWUNACST)

## CITY OF SAN MARCOS BUILDING DIVISION PERMITTING REQUIREMENTS

Please find the City's Building Division Permitting Requirements through the following link:

<https://www.san-marcos.net/departments/development-services/building-code-compliance>

## CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Please find the California's Department of Housing and Community Development additional ADU resources through the following link:

<https://www.hcd.ca.gov/policy-and-research/accessory-dwelling-units>

## CITY OF SAN MARCOS RESOURCES

Please reach out to the City's Planning and Building Divisions to discuss Permitting Requirements through the following emails:

- [planningdivision@san-marcos.net](mailto:planningdivision@san-marcos.net)
- [buildingdivision@san-marcos.net](mailto:buildingdivision@san-marcos.net)



# ACCESSORY DWELLING UNIT (ADU) – CITY STANDARDS

EFFECTIVE OCTOBER 24, 2024

DEFINITIONS	
<b>Accessory Dwelling Unit (ADU)</b> (Commonly known as granny flat, second unit, casita, etc.)	"Accessory Dwelling Unit" 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.
<b>Junior Accessory Dwelling Unit (JADU)</b>	"Junior Accessory Dwelling Unit" means a unit that is no more than 500 square feet and is contained entirely within an existing or proposed single-family residence, including all enclosed uses within the residence, such as attached garages. A JADU must include a separate entrance from the single-family residence and may include separate sanitation facilities or may share sanitation facilities with the existing or proposed structure. If a JADU does share sanitation facilities with the single-family residence, the JADU must include both a separate exterior entrance and an interior entrance to the single-family dwelling.
<b>Single-Family Dwellings</b>	One dwelling unit in one building, not including an ADU or JADU.  Under certain circumstances duplexes may be considered single-family residences.
<b>Mixed-Use and Multi-Family Dwellings</b>	Two or more dwelling units in one building, not including an ADU.
LOCATIONS ALLOWED	
<b>Zoning Districts Allowed</b>	ADUs are allowed in residential zoning districts allowing single-family, mixed-use, and multi-family residential uses, including planned residential districts and specific plan areas allowing residential uses.  JADUs are allowed in residential zoning districts allowing single-family residential land uses, including planned residential districts and specific plan areas allowing single-family residential land uses.



NUMBER AND TYPE OF ADUS ALLOWED	
<b>Single-Family Residential Land Uses</b>	<p>The following number of units are currently allowed by State Law on Single Family Residential zoned parcels:</p> <ul style="list-style-type: none"> <li>• One JADU (within existing space)</li> <li>• One attached ADU (new construction or conversion of existing space)</li> <li>• One detached, new construction ADU</li> </ul> <p>On lots permitting single-family residential uses, ADUs can be converted from existing (attached or detached) space, attached to the primary dwelling, or detached in a freestanding building pursuant to <a href="#">Government Code Sections 66310-66342</a>.</p> <p>JADUs are only allowed on lots that are zoned to allow for single-family residential use, as they must be contained entirely within an existing or proposed single-family residence and either the primary or JADU must be owner occupied.</p>
<b>Mixed-Use and Multi-Family Residential Land Uses</b>	<p>The following number of units are currently allowed by State Law on Multifamily Residential zoned parcels:</p> <ul style="list-style-type: none"> <li>• Two detached ADUs</li> <li>• Conversion of existing, attached non-livable residential space into ADUs, at up to 25% of the existing dwelling units</li> <li>• One additional ADU</li> </ul> <p>On lots permitting mixed-use residential or multi-family residential land uses, ADUs may be detached or converted from non-habitable spaces pursuant to <a href="#">Government Code Sections 66310-66342</a>.</p>
SIZE OF ADUS ALLOWED (All square footages noted below are Gross SF unless otherwise stated)	
<b>One Bedroom Units</b>	<p><u>Attached ADU</u>: The maximum size permitted for a one-bedroom attached ADU is 850 square feet.</p> <p>An attached ADU cannot exceed 50 percent of the living area of the primary dwelling, provided, however, that the maximum square footage allowed must be at least 850 square feet of gross floor area.</p> <p><u>Detached ADU</u>: Detached ADUs on a lot less than 1 acre can be a maximum of 850 square feet.</p> <p>If a lot is one (1) acre or greater, a detached ADU can be up to 1,000 square feet in size.</p>



<b>Two or More Bedroom Units</b>	<u>Attached ADU</u> : The maximum size permitted for a two or more bedroom attached ADU is 1,000 square feet.  An attached ADU cannot exceed 50 percent of the living area of the primary dwelling, provided, however, that the maximum square footage allowed must be at least 850 square feet of gross floor area. <u>Detached ADU</u> : Detached ADUs of two or more bedrooms can be a maximum of 1,000 square feet.		
<b>State Mandatory ADUs</b>	The State allows at a minimum a detached, new construction ADU of maximum 800 square feet even if it is not able to meet the development standards listed in the table below ( <a href="#">Government Code Section 66323</a> ).		
<b>JADUs</b>	A Single-family Residence JADU can be no more than 500 square feet.		
<b>ADU/JADU Development Standards</b>			
<b>Type</b>	<b>Height Limit</b>	<b>Location</b>	<b>Setbacks</b>
<b>Detached ADU</b>	<u>For Single-family zoned ADUs</u> : 16 feet, or 18 feet when within one-half mile of a major transit stop or high-quality transit corridor. ADUs within one-half mile walking distance of this transit may be permitted up to 20 feet to accommodate a roof pitch to align with the existing primary residence.  <u>Mixed-Use and Multi-family residential detached ADUs</u> : Permitted at a maximum 16 feet tall; and multifamily, multistory dwellings are permitted ADUs up to 18 feet in height maximum.	ADUs are allowed in the side and rear yards but must be located on the rear 50% of the lot, unless the lot will not allow for any other location.	ADUs must meet front yard building setbacks and must meet a minimum four (4) foot side and rear yard building setbacks from property lines and must be located at least ten feet from other structures, eave to eave.  No setbacks are required for an existing living area or accessory structure converted to an ADU or for an ADU in the same location and to the same dimensions as the original structure.



Type	Height Limit	Location	Setbacks
<b>Attached ADU or JADU</b>	An attached ADU may not exceed two stories and 25 feet or the height limit of the primary dwelling unit, whichever is lower.	<u>Attached Single-family ADUs:</u> Must be within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure.	4 foot side and rear yard building setbacks from property lines or, for conversion to JADU, sufficient for fire and safety.
<b>Conversion ADU or JADU (Single-family zoned ADUs or Mixed-Use residential and Multi-family zoned ADUs)</b>	Within existing building.	<u>Single-family residential ADUs:</u> Converting existing space of an accessory structure may include expansion of no more than 150 square feet which is limited to accommodating ingress and egress.  <u>Single-family residential JADUs:</u> Must be converted from area within the existing primary Single-family residential unit.  <u>Multi-family and Mixed Use conversion ADUs:</u> Must be converted from existing, attached non-livable residential spaces.	Sufficient for fire and safety (per building code and as determined by building official).
<b>Notes</b>	<ul style="list-style-type: none"><li>• Front yard setback shall be the same as required for underlying zoning district, except for conversion of existing building area.</li><li>• Detached ADUs shall be located in the rear 50 percent of the lot/parcel.</li><li>• Direct exterior access shall be provided.</li><li>• All exterior changes shall use the same building materials as the existing primary dwelling unit by incorporating the same or similar architectural features, building materials, and color as the primary dwelling unit on the property.</li></ul>		



PARKING		
Parking requirements	ADU/JADU	One (1) on-site paved parking space is required for an ADU unless exemptions apply.  No parking is required for JADUs.
	Primary dwelling(s)	Existing garage parking for existing primary dwelling unit(s) must be maintained, unless the garage is converted to an ADU or JADU.  With garage conversion, pre-existing driveway parking spaces must be maintained.
MINIMUM UNIT, LOT SIZE, AND OTHER REQUIREMENTS		
Minimum ADU/JADU Size		CA Building Code requires 150 square feet for an efficiency unit.
Minimum Lot Size		No minimum lot size for an existing legal lot. Any newly created lot must comply with zoning regulations.
Maximum Lot Coverage and Floor Area Ratio (FAR)		Not applicable unless specified by underlying zoning district, such as a Specific Plan Area (SPA).
FEES FOR BUILDING AN ADU		
Fees will be determined based on the specifics of your proposal.		For more information, please contact the Building Division at <a href="mailto:buildingdivision@san-marcos.net">buildingdivision@san-marcos.net</a> to discuss permit fees and other costs related to building an ADU.

**AUTHORITY:** [California Government Code Sections 66310-66342](#); all other code citations from [Title 20 \(Zoning Ordinance\)](#), [City of San Marcos Municipal Code \(SMMC\)](#).