

## **D. Accessory Dwelling Units (ADUs)**

### *Background and Purpose*

#### **ADU Purpose**

Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) are additional independent living facilities, for one or more persons, which are located on the same parcel as a single-unit or multi-unit residential dwelling. The concept of ADUs has existed for decades but has recently come to the forefront of the California housing discussion due to legislation passed starting in 2018. This legislation, discussed in more detail in the following section, makes it easier to develop ADUs by increasing the development zones where ADUs can be built, broadening the definition of an ADU, and removing previous restrictions such as requiring replacement parking.

In areas such as Newport Beach where land values are high and there is a large amount of single-unit detached housing, ADUs present a potentially more naturally affordable housing option for renters. ADUs are often smaller in size than typical apartments or rental housing, ranging from 300 to 600 square feet in size. They are also attractive to property owners who can gain rental income.

The City of Newport Beach (City) believes that ADUs present a viable option as part of the overall strategy to develop housing at all income levels during the 2021-2029 6<sup>th</sup> Cycle Housing Element planning period.

**Appendix D** describes:

- Recent ADU legislation and regional actions;
- Local factors that may increase ADU development over the next eight years; and
- Actions Newport Beach will take through housing programs to incentivizing ADU development.

#### **Background on Legislation and Statutory Requirements**

Currently in Newport Beach, ADUs and JADUs are primarily regulated through Section 20.48.200 (Accessory Dwelling Units) of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code (NBMC). Within the Coastal Zone, ADUs and JADUs are primarily regulated through Section 21.48.200 (Accessory Dwelling Units) of Title 21 (Local Coastal Program Implementation Plan) of the NBMC.

ADU legislation is addressed in Government Code Section 65852.150; it establishes that ADUs are valuable and viable form of housing which can support the varying needs of California residents. In recent years, ADU legislation has been revised to increase opportunity and improved effectiveness in creating more housing in California. Recent changes in law have increased the feasibility and streamlined the ADU process to encourage development; below is a summary of recent legislation that has amended ADU law.

#### **SB 1069**

SB 1069 made legislative changes to address barriers to the development of ADUs and expanded capacity for ADU development. The bill reduces parking requirements per unit, restricts local agencies' ability to require ADU applicants to install new or separate utility connects or impose related fees, and requires local governments to ministerially approve applications for one ADU within single-unit residential so long as it meets specific requirements.



### **AB 2299**

AB 2299 requires local governments to ministerially approve ADUs if the proposed unit meets all parking requirements, maximum allowable size of an attached unit and specific setback requirements. Additionally, the bill states that any existing ADU ordinances do not meet the bill's requirements is null and void and that the jurisdiction must approve accessory dwelling units based on Government Code Section 65852.2 until the jurisdiction adopts a compliant ordinance.

### **AB 2406**

AB 2406 creates more flexibility by authorizing local governments to permit junior accessory dwelling units (JADU) through an ordinance. The bill defines JADUs to be a unit that cannot exceed 500 square feet and must be completely contained within the space of an existing residential structure. In addition, the bill requires specified components for a local JADU ordinance.

### **AB 3182**

AB 1382 further addresses barriers to the development and use of ADUs and JADUs in local jurisdictions. The legislation streamlines approvals of ADU and JADUs using ministerial approval processes, including a requirement that complete applications for a compliant ADU/JADU which have not been acted upon within 60 days are *deemed approved*.

### **AB 68, AB 881, SB 13**

AB 68, 881 and SB 13 prohibits a number development standards and design regulations a local government may impose in ADU/JADUs, decreased the allowable time for an ADU review and permitting process, reduces the allowable associated fees for ADUs and provided additional regulatory clarifications and guidelines pursuant to Government Code Sections 65852.2, 65852.22.

### **AB 587**

AB 587 permits an ADU to be sold or conveyed as a deed restricted affordable unit separately from the primary dwelling residence. Additional, regulations are outlined in Government Code Section 65852.26, including the provision that the primary and accessory unit must be built by a qualified nonprofit.

### **AB 670**

AB 670 states that all covenants or provisions that unreasonably restrict or prohibit the development of ADU/JADUs on a lot zoned for single-unit residential use is void and unenforceable.

### **AB 671**

AB 671 requires jurisdictions to include a plan and programs in the Housing Element which incentivizes and promotes the development of ADUs for very low, low- and moderate-income households.

## **HCD/SCAG Policies and Programs**

In August 2020, the State Department of Housing and Community Development (HCD) and the Southern California Association of Governments (SCAG) completed an analysis of accessory dwelling unit affordability to establish approved assumptions for use in the sites analysis for the 2021-2029 Housing Element Cycle. The analysis surveyed rents for ADUs through different online real estate platforms between April and June 2020 and focused on specific geographic regions to determine differences in



affordability. The final affordability assumptions resulting from SCAG and HCD's analysis for jurisdictions within Orange County are as follows:<sup>1</sup>

- Extremely Low – 15.0%
- Very Low – 10.0%
- Low – 43.0%
- Moderate – 30.0%
- Above Moderate – 2.0%

The City of Newport Beach applied the above approved affordability breakdown to the anticipated ADU development within the 6<sup>th</sup> Cycle planning period.

### *Opportunities for ADUs in Newport Beach*

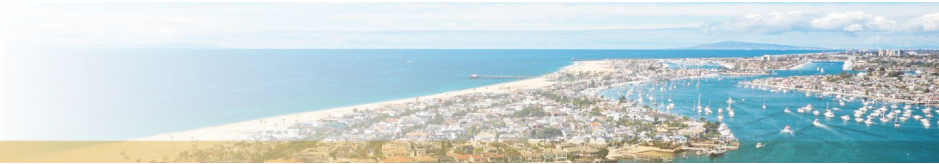
#### **Influences Supporting Affordable Housing in Newport Beach**

Opportunities to develop affordable housing on vacant land in the City are extremely limited with only three parcels qualifying based on the SCAG Housing Element Parcel Tool (HELPR) (see **Figure 1**). The City, however, has substantial opportunity to develop affordable housing through ADUs based on the following key factors:

- **High land values in the City incentivize ADU development** - Because of the high land values in Newport Beach and the propensity to have viable, financially performing properties, infill opportunities on existing residential sites via ADU development represents the greatest opportunity for affordable housing construction and to integrate such development within established neighborhoods. According to SCAG's HELPR, there are numerous parcels that could qualify for by-right detached ADUs, with little to no restrictions. In addition, every single-unit in the City has the potential to convert existing space, including garage area, into an ADU or JADU by-right, resulting in approximately 19,000 eligible properties (see **Figure D-2**). Therefore, the City contends this provides the most significant opportunity to generate affordable housing in the community.
- **Site availability for ADUs is significant** - Almost 8,000 existing parcels have the physical space to accommodate detached ADUs and provide for ample opportunity to add to the housing stock. Whereas the City may lose economic potential, jobs and tax base with infill redevelopment of existing commercial uses, encouraging ADU development on existing residential properties does not deteriorate economic, job and tax base considerations. Rather, it will likely enhance availability of diverse housing opportunities, promote economic stability and further the City's tax base.
- **Positive Historical Trends in ADU Development** - The City's history of ADU/JADU development within multifamily developments demonstrates opportunity to develop attached ADUs as an affordable component of larger housing projects. These positive trends are directly correlated with the City's current efforts to provide supportive policies, outreach and information dissemination to its residents. The City has experienced year over year increase in ADU activity

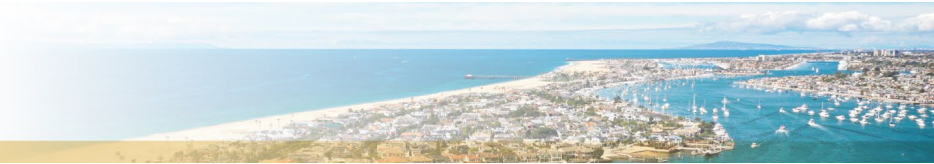
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<sup>1</sup> SCAG Regional Accessory Dwelling Unit Affordability Analysis, 2020

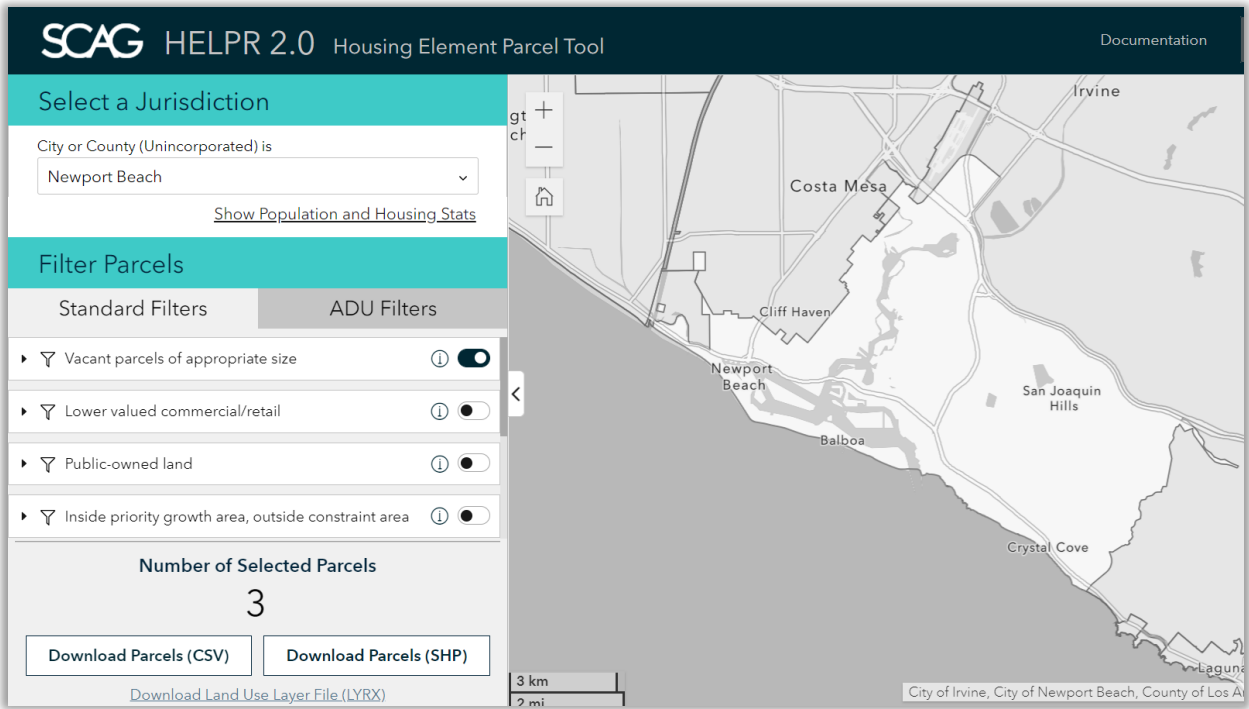


in the City and will continue to see these trends increase and exponentially expand throughout the 2021-2029 planning period through intensified public outreach and development incentives.

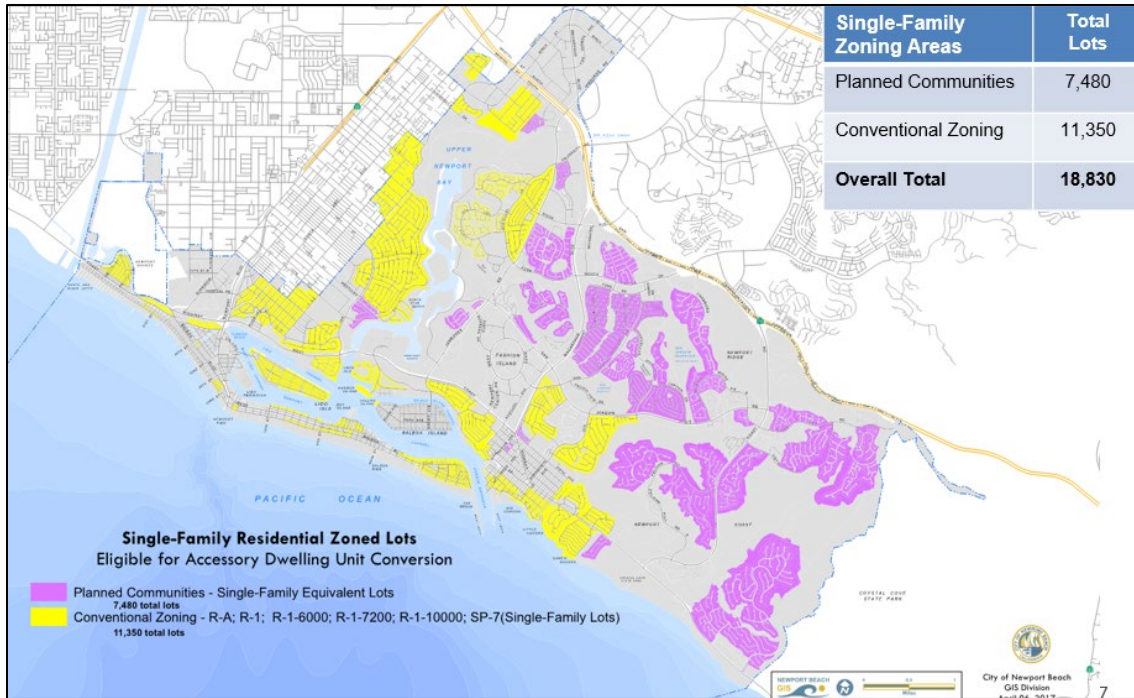
- **Demonstrated Commitment to ADU Development through Policies/Programs** – The City Council has recently adopted policies that support ADU development and has developed an ADU Ordinance that strongly encourages ADU development. In addition, that City will adopt additional ADU policies the further support ADU development citywide. Providing strong support through policies, community outreach and monitoring of ADU construction.
- **Council Policy K-4 (Reducing the Barriers to the Creation of Housing)** – On March 9, 2021, the City Council adopted Council Policy K-4, which includes a stated goal of increasing the production of ADUs and JADUs. The policy recognizes that further encouraging development of ADUs beyond State law minimums is an important strategy to accommodate future growth. To further encourage and incentive the development of ADUs, the policy set forth the following directives:
  1. Interpret ambiguities in code provisions regulating ADUs in a manner that accommodates and maximizes production.
  2. Direct staff and the Planning Commission to review and recommend code changes that reduce regulatory barriers, streamline the approval process, and expand potential capacity of ADUs beyond minimum State law requirements
  3. Publicize incentives for construction of ADUs with a systematic approach utilizing all forms of media and outreach.
  4. Prepare and maintain a user-friendly website committed to information related to codes, processes, and incentives pertaining to the development of ADUs and JADUs in the City.
  5. Develop and administer a program that includes waiving all permit and City fees for property owners of unpermitted units when they agree to bring units into compliance with current building and fire codes to ensure the safety of occupants and structures.
  6. Develop permit-ready standard plans to permit new ADU construction to minimize design costs, expedite permit processing, and provide development certainty for property owners.
- **Temporary 2-Year Fee Waiver Program for ADU and JADU Development** – On April 27, 2021, the City Council adopted Resolution No. 2021-37 waiving City building plan check, building construction permit, and other related City fees required for plan check, permits, inspections, re-inspections and other related activities, for the design and construction of ADUs and JADUs on existing residential developments and the legalization of exiting unpermitted ADUs and JADUs.



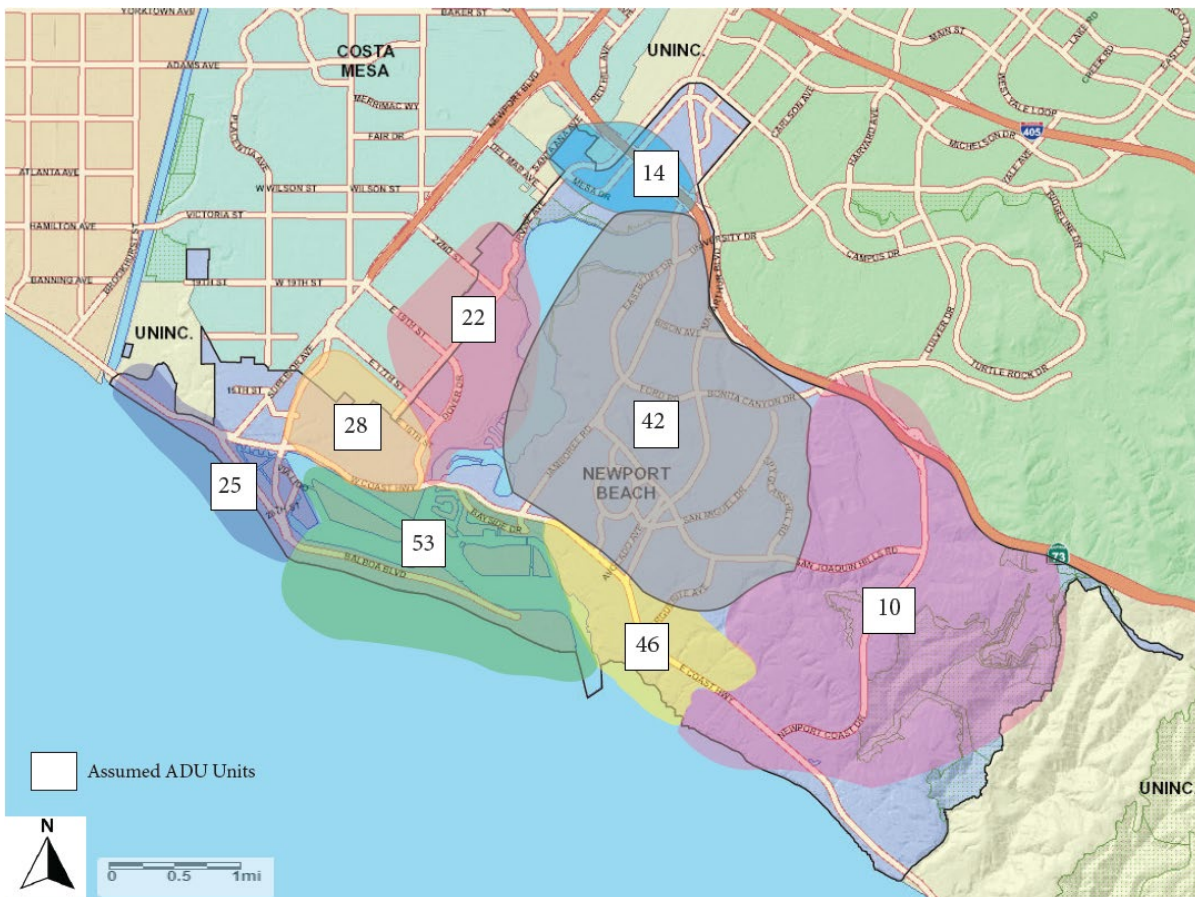
**Figure D-1: Vacant Land Availability**



**Figure D-2: ADU Eligible Lots**



**Figure D-3: ADU Opportunity Areas Map**





**Local ADU Trends and 2021-2029 Projections**

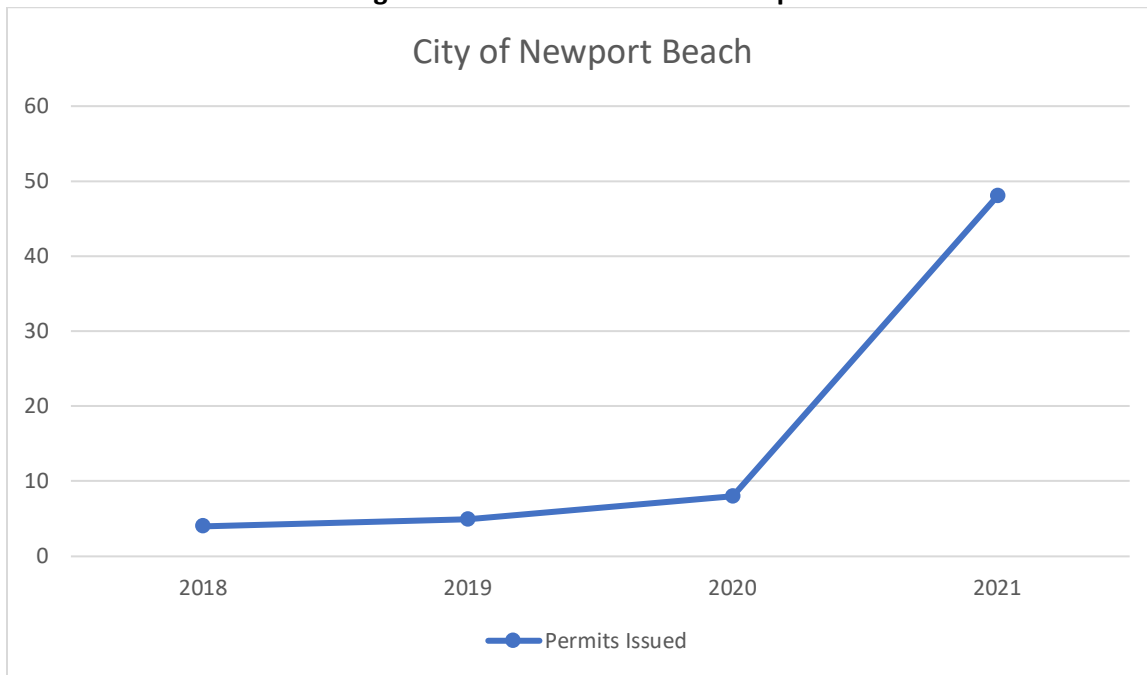
There are several indicators of strong growth in ADU development since 2018 within Newport Beach. **Table D-1** shows the City’s number of ADUs that were issued building permits (permitted) since 2018. Initial interest in development of ADUs in the City, like other cities in the State, was slow due lack of public awareness of the new opportunities and complexity of the laws. Additionally, the City’s initial ADU regulations adopted in 2018 were intended to comply with State law be as restrictive as possible. However, in 2019, the City amended its ADU regulations to comply with updates in State law but also included additional design flexibility for ADUs and adopted incentives. Due in large part to increased education of property owners, City Council support of ADU development, and additional local policies promoting the development of ADUs, the City of Newport Beach is experiencing exponential growth in ADU interest and development. The largest increase came in 2021 when the City issued building permits for 40 ADUs with an additional 29 ADU permits pending. This represents a 1325% increase in total permits issued from 2018 through 2021.

**Table D-1: Newport Beach ADU Development (2018-2021)**

ADU STATUS	2018	2019	2020	2021 <sup>1</sup>	Total
Permitted	4	5	8	48	57

<sup>1</sup> 40 ADUs permits have been issued as of October 28, 2021, which prorated monthly represents 48 for the year. Final year totals anticipated to be higher given there are an additional 29 permits are pending.

**Figure D-4: Permit Issuance in Newport Beach**



This exponential growth is not unique to the City of Newport Beach, but is similarly occurring in all other cities throughout the State. **Table D-2** below illustrates the number of ADUs permitted from 2018-2020 in the various council of governments within the Southern California Council of Governments region. The data is based on HCD Annual Progress Report (APR) analysis and only includes data from the available reported years of 2018-2020. Similar to what is being experienced in Newport Beach, it is anticipated that



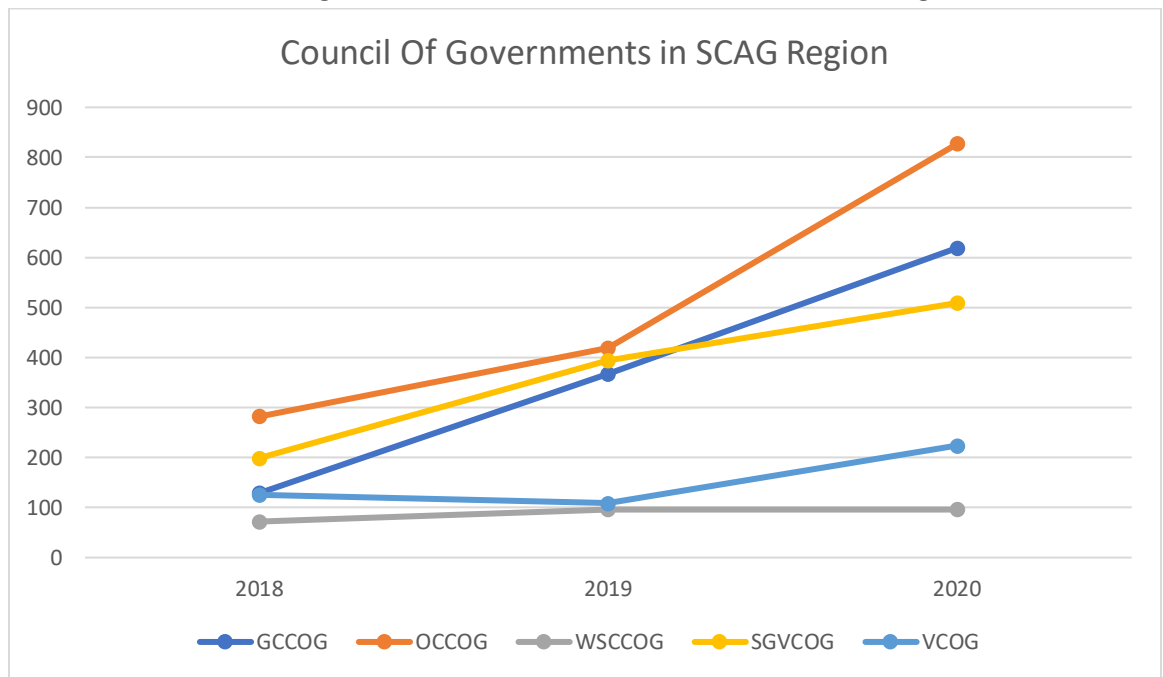
reported ADU permits for 2021 will have exponentially grown due to the increased public awareness and outreach efforts of the various jurisdictions.

**Table D-2: ADU Development in SCAG COGs (2018-2020)**

ADU STATUS	2018	2019	2020
Gateway Cities Council of Governments (GCCOG)	129	368	619
Orange County Council of Governments (OCCOG)	282	419	827
Westside Cities Council of Governments (WSCCOG)	72	96	96
San Gabriel Valley Council of Governments (SGVCOG)	199	395	509
Ventura Council of Governments (VCOG)	126	109	224

*Source: SCAG ADU APR Permit Reporting Data Analysis*

**Figure D-5: Council of Governments in the SCAG Region**



**Newport Beach 2021-2029 ADU Projections**

Based on the data in **Table D-1**, the citywide availability of land for ADU development and the existing and future policies supporting more aggressive ADU development, Newport Beach is reasonably and justifiably projecting future growth beyond the safe harbor methodology provide in HCD’s published guidance.

**Table D-3: 2021-2029 ADU Annual Average**





Year	Conservative Approach
2018 - 2021 Prorated Annual Average	19
Annual Average x 1.5	30 (rounded)
Planning Period Total	240

**Table D-3** shows the City’s ADU assumptions as described in **Appendix B** of the Housing Element. As noted, the City anticipates that growth in ADU development will continue to occur year over year; however, the City is assuming a conservative approach by anticipating a growth factor of approximately 1.5 times the past four-year average of 19 ADUs (approximately 30 ADUs per year anticipated), resulting in a total anticipated production of 240 ADUs for the 2021-2029 Planning Period. A 1.5 factor for growth is reasonable given the development trends illustrated in Tables D-1 and D-3, extensive local policy emphasis on ADU development, and proposed housing programs described in **Section 4**. In addition, the City is committed to enhanced monitoring to ensure actual production is on pace with projections.

The City of Newport Beach is well positioned, both from an availability of potential development areas within existing single-unit neighborhoods and from a political will standpoint, to realize a large increase in ADU development significantly exceeding the conservative estimate of 240 ADUs during the 2021-2029 planning period.

### *Housing Element Policy Framework*

The City of Newport Beach has identified programs to maintain and encourage ADUs during the 2021-2029 planning period. The matrix below identified existing policies contain in **Section 4** of this document as well as policies the City will review for feasibility to implement in order to increase affordable housing.

**Table D-3: ADU/JADU Policies and Policy Considerations**

ADU Policy Type/Name	Description	Consideration
<b>Housing Element Policies</b>		
<b>Policy Action 1H: Accessory Dwelling Unit Construction</b>	Support and encourage the development of ADUs in Newport Beach	Explore feasibility of incentives for ADUs, including developing educational campaigns and minimizing development costs through permit ready plans.
<b>Policy Action 1I: Accessory Dwelling Units Monitoring Program</b>	ADU development Tracking Program	To identify progress and make appropriate program adjustments, the City will monitor ADU applications and approvals.
<b>Policy Action 1J: Accessory Dwelling Units Amnesty Program</b>	Legalizing unpermitted ADUs	Providing education, incentives and low-risk avenues to encourage property owners to legalize unpermitted ADUs and bring them up to necessary fire and life safety codes.
<b>ADU Policies for Consideration</b>		
<b>ADU Development Streamlining</b>	Permit Ready Program	Developing and offering of pre-approved ADU building plans to help to reduce cost burden on applicant side.
<b>JADU Incentive Production</b>	Junior ADU Program	Evaluate additional incentives for JADU production above those currently offered.



ADU Policy Type/Name	Description	Consideration
<b>Public Outreach and ADU Education Program</b>	ADU Outreach Program	Formal development of public outreach and dissemination of materials for ADU and JADU (both electronically and in print).
<b>ADU/JADU Subsidy Program</b>	Subsidy incentives to construct ADUs	Provide grants or low interest loans to interested property owners in exchange for deed restricted ADU/JADUs.
<b>Production/Incentives</b>	Incentives to create long term affordability of ADU/JADU	Granting fee waivers, additional development standards waivers, or square footage bonuses in exchange for affordability covenants.
<b>ADU and JADU Incentive Programs</b>	Various development standards and entitlement streamlining actions	<ul style="list-style-type: none"> <li>• Fee Waiver/Deferral</li> <li>• Over the Counter Approvals</li> <li>• ADU One Stop Permit</li> <li>• Subsidies for Affordability</li> </ul>

### *Summary of Newport Beach ADU Approach*

#### **Anticipated ADU Growth (Planning Period 2021-2029)**

Newport Beach anticipates that the City will continue to see year after year growth in ADU development which matches or exceeds the growth in ADU activity shown from 2019 to 2020. The City has over 21,000 single-unit dwelling units, all of which are eligible to develop one ADU and one JADU. Additionally, multi-unit apartment complexes can also develop ADUs if the requirements of State law and the City’s local ordinances are met.

While the City anticipates hundreds of ADUs to be developed within the 2021-2029 planning period based on increased production of ADUs year over year as demonstrated in **Table D-2**, for the purposes of the Housing Element, the City is conservatively estimating 240 ADUs.

In accordance with HCD/SCAG guidance on affordability assumptions within the Housing Element Update process, the City anticipates that 151 of these units will be affordable to residents within the very low and low-income categories, 84 will be affordable to residents within the moderate income category, and 48 will be affordable to residents within the above moderate-income category.

#### **Supportive Policies and Programs**

Newport Beach has proposed programs within the 2021-2029 Housing Element to take meaningful steps towards promoting and incentivizing ADU growth during the planning period. The City will explore incentives beyond what has been established to date, including the potential for permit-ready plans or a streamlined process if certain requirements are met. **Table D-3** outlines a list of further ADU incentives that the City may explore during implementation of **Policy Action 1H**. The City also plans to continue its ADU amnesty program to bring existing non-conforming accessory units up to code so that the City can realize RHNA credit for these existing housing units within the community.



### **Monitoring Requirements**

The City of Newport Beach is required to report all development within the City, including ADU development, to the State Department of Housing and Community Development (HCD) annually through their Annual Progress Reports (APRs). As part of this reporting, the City must show adequate progress in meeting their identified ADU growth assumptions as described above.

To address HCD's ADU monitoring and reporting requirements, the City has included **Program 1I** within the Housing Plan (Section 4). This states that the City will conduct an assessment of ADU growth within two years of adoption of the Housing Element. If ADU assumptions are not keeping pace with the assumptions made within the Housing Element, the City will implement fall back actions to accommodate the shortfall, if necessary.