

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 533-5800

DATE: July 19, 2019
TO: Council President Georgette Gomez
FROM: City Attorney
SUBJECT: Companion Units and Residential Parking Permit Program

INTRODUCTION

In 1977, the City of San Diego (City) created the Residential Permit Parking Program (Program), which established a parking permit system for certain residential zones throughout the City. One of the residential zones is in the San Diego State University Community, both north and south of Montezuma Road and both east and west of College Avenue, designated as Area B. You asked our Office to analyze whether residents living in companion units¹ within Area B are eligible for residential parking permits.

QUESTIONS PRESENTED

1. Are residents who live in companion units in Area B eligible for residential parking permits?
2. Can the City restrict the number of residential parking permits provided to companion units in Area B?

SHORT ANSWERS

1. Yes, residents living in companion units in Area B would be eligible for residential parking permits under the Program.
2. Yes, the San Diego City Council (City Council) may limit parking permits provided to companion units by: (1) resolution, but the limitation must apply equally to residents of primary dwelling units and companion units; (2) amending the San Diego Municipal Code (Municipal Code or SDMC) to change the Program to limit permits by parcel, for example; or (3) by adopting an ordinance that amends Area B, but that may require a re-designation of the zone.

¹ Commonly known as “granny flats.”

BACKGROUND

The Program was enacted in 1977. Its provisions can be found in Article 6, Division 20, sections 86.2001 through 86.2016 of the Municipal Code. The Program is intended: “to protect and promote the integrity of these [designated] areas and neighborhoods, . . . to enact parking regulations restricting unlimited parking by non-residents therein, while providing the opportunity for residents to park near their homes.” SDMC § 86.2001. The Municipal Code further states that the “City Council may, by resolution, limit the number of permits issued to any resident or dwelling unit if such limitation would further the goals of the residential permit parking program.” SDMC § 86.2008(d).

In 1984, the City Council adopted San Diego Resolution R-261245 (Jul. 24, 1984) and created Residential Permit Parking District – San Diego State University – Area B (Area B). The resolution creates the zone limits, establishes a requirement for a residential parking permit Monday through Friday between the hours of 8:00 a.m. and 7:00 p.m., and limits the number of permits to “four per residential dwelling unit.”

Recently, with the growth of companion units in Area B, residents have raised concerns that parking permits are being overdistributed.² Companion units in the area are assigned regular street addresses for emergency response purposes. When residents apply for a parking permit, they need to provide their street address along with documentation to verify their residency. Because companion units have a regular street address, it is now possible for a primary dwelling unit and a companion unit to be given four parking permits each. This means that a parcel that was originally eligible for four permits would now be eligible for eight permits once a companion unit was added.

You asked our Office to analyze whether this is legally permissible. We provide our analysis below.

ANALYSIS

I. RESIDENTS OF PRIMARY DWELLING UNITS AND RESIDENTS OF COMPANION UNITS ARE TREATED SIMILARLY UNDER THE PROGRAM.

In order to determine whether residents of companion units are eligible for parking permits, we must first determine if those who live in companion units are eligible under the Program. Municipal Code section 86.2003 provides the following definitions that pertain to the Program:

² City staff have determined that during FY2013-FY2019, the number of resident parking permits issued has increased an average of 5.14% annually, while visitor placards issued have increased an average of 0.87% for the same periods. An eligible resident may request one visitor placard in lieu of one of the four permits per dwelling unit, and that placard will count against their maximum number of permits.

- (a) “Residential area” shall mean a contiguous or nearly contiguous area containing public streets and highways or parts thereof where *residents dwell* (emphasis added);³

....

- (j) “Legal resident” shall mean a full-time resident of a residential property within a residential area, or a person in the employ of a licensed residential care facility occupying a single-family residential dwelling located within a residential area.

Municipal Code section 86.2008(b) describes the issuance of permits under the Program:

- (b) Parking permits may be issued for motor vehicles only upon application of the following persons:
 - (1) *A legal resident* of the residential permit parking area who has a motor vehicle registered in his name, or who has a motor vehicle for his exclusive use and under his control; . . .

SDMC § 86.2008(b) (emphasis added).

Thus, a person who is a full-time resident of a companion unit in the “residential area” of Area B would be a “legal resident” for purposes of issuing permits. There are no distinctions drawn between residents living in different types of structures, such as primary dwelling units or companion units. While there is a definition of “companion unit” in the Land Development Code,⁴ the definitions contained within the LDC are intended only to have meanings and usages within land development contexts, and these definitions do not apply to other Chapters of the Municipal Code.⁵

As mentioned above, the Municipal Codes state that “the City Council may, by resolution, limit the number of permits issued to any resident *or* dwelling unit...” [cite] (emphasis added). This means that the City Council has discretion regarding how to limit permits. In this case, the City Council elected to limit by dwelling unit rather than resident. Resolution No. 261245 limits permits to four per “residential dwelling unit,” which the City has interpreted to mean a legal street address within the zone. This interpretation is in line with City Manager’s Report 84-278, which accompanied Resolution No. 261245 when it was first heard by the City Council on July 24, 1984. In that report, the City Manager recommended the following actions:

³ To “dwell” is commonly defined as “to have an abode; to inhabit; to live in a place.” Black’s Law Dictionary.

⁴ SDMC § 111.0102. The LDC comprises Chapters 11-15 of the Municipal Code.

⁵ Furthermore, the LDC did not exist in its current form when the Program was crafted in 1977 and when Resolution No. 261245 was passed in 1984.

- 1) Establish a residential permit parking district in the San Diego State University Community (Area B), effective between the hours of 8:00 a.m. to 7:00 p.m., Monday through Friday, with parking allowed only for those residents who have equipped their vehicles with a parking permit, and
- 2) limit the number of permits to be issued in Area B to not more than four per residential dwelling unit.

At the time, Area B was “an area of single-family homes.” (City Manager’s Report 84-278).⁶ When the City Council approved a limit of four permits per “residential dwelling unit,” it was their expectation that each parcel would be limited to one residential dwelling unit as the nature of the area was exclusively “single-family homes.” Requiring a permit applicant to provide a legal street address within the zone was a reasonable implementation of the permitting process for this zone, as any address that fell within Area B would have been tied to a legal resident in a residential dwelling unit.

Area B is no longer exclusively single-family homes. Because the City Council did not contemplate additional dwelling units outside of single-family homes, there is no guidance as to how the City Council then would have sought to limit companion units and other such accessory structures at the time of the creation of Area B. The City Council today is free to consider other such limits.

II. THE CITY MAY PLACE A LIMIT ON THE NUMBER OF PERMITS BY RESOLUTION, BUT THAT LIMIT MUST APPLY TO ALL LEGAL RESIDENTS IN THE RESIDENTIAL PARKING PERMIT AREA.

As discussed above, in Resolution No. 261245, the City Council exercised this authority to limit permits in Area B to “four per residential dwelling unit.” The City Council may exercise its authority to adjust this limit by resolution. However, because persons living in companion units within Area B are “legal residents” for purposes of the program, any revised limit must apply to all such residents in Area B. For example, if the limit were reduced to two permits per residential dwelling unit, a primary dwelling unit would be eligible for two permits and a companion unit would be eligible for two permits.

Denying all permits to residents of companion units while maintaining the current level of four permits for primary dwelling units would be legally problematic. The Equal Protection Clauses of the Federal and State constitutions require that governmental decision makers treat parties equally under the law if those parties are alike in all relevant respects. The Supreme Court has reviewed preferential residential parking programs in relation to the Equal Protection Clause.

⁶ The City Manager’s Report notes that there were 1,088 residences in the zone in 1984, which would mean the City Council had originally contemplated a maximum capacity of 4,352 permits. In FY 2019, 3,581 permits were issued in Area B.

In *County Board of Arlington County v. Richards*, a residential parking permit program like the City's was challenged on the ground that it violated the Equal Protection Clause of the Fourteenth Amendment because it differentiated between residents and nonresidents. *County Board of Arlington County v. Richards*, 434 U.S. 5 (1977). The plaintiff argued that discriminating between residents and nonresidents "bears no reasonable relation to [the regulation's] stated objectives." *Id.* at 6-7 (quoting *County Bd. of Arlington County v. Richards*, 217 Va. 645, 651 (1977) (judgement reversed by *Richards*, 434 U.S. 5)). Those objectives were:

to reduce hazardous traffic conditions resulting from the use of streets within areas zoned for residential uses for the parking of vehicles by persons using districts zoned for commercial or industrial uses . . . ; to protect those districts from polluted air, excessive noise, and trash and refuse caused by the entry of such vehicles; to protect the residents of those districts from unreasonable burdens in gaining access to their residences; to preserve the character of those districts as residential districts; to promote efficiency in the maintenance of those streets in a clean and safe condition; to preserve the value of the property in those districts; and to preserve the safety of children and other pedestrians and traffic safety, and the peace, good order, comfort, convenience and welfare of the inhabitants of the County.

Richards, 434 U.S. 5 at 6. The Supreme Court determined that "a community reasonably may restrict on-street parking available to *commuters*, thus encouraging reliance on car pools and mass transit. The same goal is served by assuring convenient parking to *residents* who leave their cars at home during the day." *Id.* at 7 (emphasis added). The Court went further, explaining that "[t]he Constitution does not outlaw these social and environmental objectives, nor does it presume distinctions between *residents* and *nonresidents* of a local neighborhood to be invidious. The Equal Protection Clause requires only that the distinction drawn by an ordinance like Arlington's rationally promote the regulation's objectives." *Id.* (emphasis added). For these reasons, the Supreme Court concluded that discriminating between residents and nonresidents for a parking permit program akin to the one in *Richards* would not violate the Equal Protection clause. *Id.*

While the *Richards* case deals with distinctions drawn between residents and nonresidents, the question of withholding parking permits from companion units would involve discriminating between two types of legal residents. As discussed above, the legislative purpose of the City's parking program focuses on limiting non-resident parking: "In order to protect and promote the integrity of these areas and neighborhoods, it is necessary to enact parking regulations restricting unlimited parking by *non-residents* therein, while providing the opportunity for *residents* to park near their homes." SDMC § 86.2001 (emphasis added). It is difficult to see how excluding one class of residents would rationally promote the regulation's objective of providing the opportunity for residents to park near their home, particularly because the effect of withholding parking permits from companion units would deny parking to legal residents of Area B.

III. THE CITY COUNCIL MAY AMEND THE PROGRAM'S PROVISIONS OF THE RESIDENTIAL PARKING PERMIT PROGRAM BY AMENDING THE MUNICIPAL CODE.

To address a potential proliferation of parking permits due to the inclusion of companion units with separate addresses, the City Council may consider amending to the Municipal Code sections that govern the Program. For example, the Council may consider an amendment that would limit permits by parcel rather than address.

The City Council may also consider amending the Area B permit parking area. Any proposed changes to the boundaries of the zone, to the time limitations on parking, or to the period of day when such limits would apply would require a re-designation of the zone under the process laid out in Municipal Code sections 86.2006 and 86.2007. This process requires performing surveys or studies necessary to determine the parking needs in the area, as well as holding a public hearing to allow residents of the area to provide input on the zone's boundaries and time limits. City staff has informed our Office that such a process would take approximately eighteen months at a minimum to complete.

Both options discussed above would require additional analysis by City staff and this Office.

CONCLUSION

Residents who live in companion units in Area B are eligible for parking permits under the Program. The City Council may change the limit on the number of permits by resolution, but any change must rationally promote the regulation's objective of providing parking for residents. Excluding a class of residents such as those living in companion units would not promote this objective. The City Council could consider amending the Municipal Code to allow the City to limit parking permits on a per parcel basis, subject to further legal review. Finally, the Council may consider an ordinance making revisions to the Area B parking area, but any such changes may require re-designation of the zone.

MARA W. ELLIOTT, CITY ATTORNEY

By /s/Ryan P. Gerrity

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