December 12, 2022

To: City of Dana Point

Re: 432 Monarch Bay Drive

From: Timothy and Mary McFadden, Owners

Beginning in 2016, new California laws have made it easier for residents to build an Accessory Dwelling Unit (ADU), also called a "granny flat," on their property — a self-contained living unit averaging 750 square feet. The state hoped ADUs would help alleviate housing shortages and high housing prices, providing places to live for family members, students, in-home health care providers, the disabled, and others at below-market prices within existing neighborhoods."

Although hundreds of California communities have written their own ADU ordinances incorporating the state's new rules, the City of Dana Point has not for homes located in Coastal Zone, which represents 45% of all homes in Dana Point. The city of Dana Point has spent hundreds of thousands of dollars developing ADU ordinances (see attached City of Dana Point Agenda Report 08.09.21 staff agenda ADU Coastal Zone 11.22.21) but carved out Coastal Zone Homes which is inclusive of our home at 432 Monarch Bay Drive. The City Planner told us that the Dana Point City Attorney has mandated to Planners that all Coastal Zone Properties must meet the repealed and replaced Section 9.07.210 Second Dwelling Units (dated 8.13.96) vs using the newly passed Section 9.07.210 (08/09/21 stated above) and our ADU Building Permit plan submittal must meet the 1996 ordnance which does not comply with ADU California State Laws. It is unacceptable that over half (55%) of the homes in Dana Point have City Ordinance that allows for much larger ADU units and limits parking requirements which is more in line with State ADU Laws.

Our ADU plans meet the much more restrictive City of Dana Point Ordinance by having to follow the 1996 ordinance (which the newer ordinance states was repealed and replaced). This caused our ADU unit to be only 30% of existing Home and required an ADU Parking area. 432 Monarch plans meet the 1996 ADU Ordinance and quite frankly should be permitted to follow the state law ADU and new Dana Point ADU Ordinance without being carved out. This would allow our ADU unit to be approximately 1100 Square Foot Attached ADU Unit versus the much smaller one being presented tonight. We have confirmed with Staff of Dana Point Planning that in the event City of Dana Point is forced to follow State Law we will be able to amend the size of our ADU to meet State Law at that time.

In April 2021, Dana Point McFadden Family Trust (Tim and Mary McFadden, Trustees "McFadden's") submitted plans for an ADU with the City of Dana Point after exhausting all attempts with Monarch Bay ACC committee and MBA Board of Directors **to accommodate an alternative for our family's needs**. Our ADU building plans will allow us to create a place for Mary's elderly handicapped father and our three children, to live in and enjoy our property under ADU State Law in the State of California.

Our submittal included an attached ADU to our single-family residence in Monarch Bay Drive, plus an approved HOA Remodel to our home. We read the applicable statutes and concluded that our project was exempt from needing a Coastal Development Permit (CDP), but the City of Dana Point Staff stated since we live in Coastal Zone, we must submit for a CDP Permit and adhere to the 1996 ADU Ordinance.

After several emails and meetings with Dana Point Staff under advice of their City Attorney the City still insisted we needed a CDP and refused to review our initial ADU applications and also many amended plans were not permitted to be submitted to the City for review. After 14 Months of this back-and-forth denial by City of Dana Point to accept for review of remodel and ADU Plans the McFadden's eventually filed a modified ADU plan that complied with the outdated 96 ADU Ordinance on June 1, 2022, which the City of Dana Point took into Plan Check.

Working with the City of Dana Point for 14 Month was a delay to even accept our Building plan submission into City for Plan Check. Finally On June 1, 2022, 432 Monarch Remodel was given Building Permit Number BLD 22-1007 and ADU Plans were given Building Permit Number BLD 22-1008. After Several months of Plan Checks we received confirmation on 10/06/2022 that both Building Permits for Remodel and ADU Unit were deemed complete, and the next step would be Planning Commission.

The city of Dana Point sent out a Public Notice for a November 2022 meeting, but the public notice did not identify our ADU Building Permits accurately thus we were forced to delay, and the City agreed to amend and update the Public Notice to reflect our actual building permit requests and acknowledge our ADU. The notice was resent for the December 12, 2022 Planning Commission Meeting. This once again has delayed our permit process by another month.

The fact that City of Dana Point has never adopted a formal regulation interpreting the [state's ADU] statute for Costal Zone Properties is evident by carving out Coastal Zone Properties from the new ADU Ordinance and forcing Coastal Zone Properties to follow 96 ADU ordinance. This carve out has caused McFadden's major issues for our ADU Plan Delays, extensive financial costs, time, and the City is not in compliance with State ADU Laws and or Coastal Commission.

See the very good news for McFadden's for our Approval Process with Planning: a favorable Final Ruling of facts very similar to our facts and hardships with trying to obtain final permit for remodel and ADU unit under California State Law. See below:

"A most recent Final Ruling (Riddick-v-Malibu case 21SMCP006655 Honorable Mark A. Young dated July 26, 2022" – (Malibu Case ADU 07/06/2022 File - Judge Final Ruling in favor of Homeowner, Complaint, and Opening Brief Attached) and request this case and "Final Ruling" become a matter of record for our Planning Commission Review prior to any ruling by Planning regarding our Building plans. We also understand the Judge "cited the fact that the Coastal Commission issued memos to guide coastal city governments like City of Dana Point (from April 2017 to April 2020) on implementing state ADU law in the coastal zone.

Until the commission abruptly changed course in 2022 after a meeting with the city of Malibu its guidance consistently stated that the construction or conversion of an [ADU] contained within or directly attached to an existing single-family residence was exempt from a CDP. We are confident that the City of Dana Point has had numerous conversations with Coastal regarding this matter thus McFadden's feel they should not have to file a CDP for our ADU Unit plans." We request the opportunity to update our Plans to remove the CDP from being required by City of Dana Point prior to Planning Commission decision regarding our plans and permits. The city of Dana Point is legally obligated to review an ADU application within 60 days of deeming it complete. This has not been done to date.

The court went on to say: "There are two simple questions 1) whether the new ADU structure met the requirements of California law and 2) whether it was attached to the main house or detached from the main house." In McFadden's case, our ADU Plan being presented to the Planning Commission is legally compliant and attached to the main house thus we also answer Yes to BOTH simple questions.

For the record, does the City of Dana Point require HOA approval prior to submitting a building permit for remodel and or ADU Unit? This is a vital fact to understand, thus please address for us. I know our meeting with Staff at City of Dana Point stipulated that the City would review our plans under City Building Codes and or City Ordinances and would not get involved between a homeowner and their HOA.

- If this is not the case and the City of Dana Point requires 100% of the building permits to have HOA approval prior to obtaining Planning Commission approval and or City Council approval, we need to understand this new provision of REQUIRD HOA APPROVAL within City of Dana Point so we can submit evidence to support us under ADU California Law regarding HOA and ADU Approval. We know in the past HOA approval is not necessary to obtain a building permit and or ADU Unit under California Laws. Please contact us with confirmation so we can submit evidence as needed so we are not further delayed with our approval process.

Most of the letters sent to the City do not state that ADU is covered under State Law and the fact that current Monarch Association CCRs must be updated to reflect State law and not delay ADU permit process that follows City ADU requirements and or California State Laws. Most of the letters are <u>template letters</u> stating the same thing and filled with emotion vs taking the time to truly understand the full facts of our two years ordeal with Monarch HOA Board, and ACC Committee members (Full file upon request and very important to establish this fact in event of appeal and or legal proceedings to protect our rights and pending our question above to Planning Commission regarding HOA Approval being necessary). Many of the owners, following the direction of Monarch Bay leaders state that an ADU must be a rental unit as City of Dana Point understands ADU may be built for Family Members (1 Government Code 65852.150 included in <u>ADU december 2020 handbook – Attached</u>). We understand that Monarch Bay is updating CCRs at this time and I have told the current President to make sure the new ADU law is included with this update. The ADU Handbook offers great support for our ADU Unit being approved by the Planning Commission.

There are too many facts to put into this letter, but we will reserve the right to utilize all the facts regarding all ACC and Board material at appeal and our legal as needed and once Planning Commission addresses the need for HOA approval prior to City issuing final building permit. Once again Monarch has not **attempt to accommodate an alternative** to our planned ADU plan to-date.

We have invited City of Dana Point Staff and now we will invite Planning Commission to visit 432 Monarch and see the massive homes on our Street and below in the mall (44 of 214 total homes in Monarch Bay) that have been approved by Monarch ACC and permitted by City of Dana Point. Our home is very small and the ADU addition is well within what has been approved by Monarch for many years all around us. In fact, many of the homes backing to PDH and in the mall were "Secretly approved to go much higher and wider" and to have "Water Features" without any disclosure to Mall Residence with CCR and ACC changes when all of the massive Monarch Governing Documents were changed to reflect the "All or Nothing" was removed to Leased land in 2012. Two of the homes that benefited by this hidden change are 429 Monarch and 431 Monarch that were able to build monstrosities backing to PCH by increasing the floor elevation of the home by 5 to 7 feet above existing grade and take views away from our home towards mountain view and mall tree areas. With all the approvals of Monarch HOA and Permitted Tear Downs and remodels on our street all we have is our very small home surrounded by Massive approved and Permitted by City of Dana Point tear downs.

As previously stated, Monarch HOA to date has not made any **attempt to accommodate an alternative** to our planned ADU plans. No accommodation has been given to our current ADU plans and the ACC turned down a 3-foot increase "tear down" separate plan with subterranean level which did not include an ADU Unit that would have minimized any view impact to homes since they already have homes that were approved at 5 to 7 feet above grade on PCH as previously stated. This plan would cost McFadden's 750K or more due to subterranean and we were willing to do this, and Lisa Klasky denied the plans thus we have no alternative but to build ADU under state law. Our architect contacted to propose this alternative, but Lisa Klasky flatly denied this plan versus our ADU plans.

We sent out another letter to Monarch Owners on Monday 12/05/22 once again trying to explain the facts since most owners are busy and do not know the facts of our over two-year process of getting our home remodeled. See attached: Letter 432 Monarch Community McFadden 12.05.22 Sent USPS.

We also have just been told by City of Dana Point Staff member by email this morning that our past emails, submitted documents, and others regarding this permit process from day one has not been forwarded to planning commission to-date thus not be a part of our public record as needed. We were told all we needed to do was request this in writing. Please accept this as our request to allow all parties to see the facts regarding our permit process and enter all of our emails into record.

We requested and received (Link see below) Dana Point public records for 15 homes located in the mall that have been HOA Approved and Permitted by City of Dana Point on our street and located see attached link:

- https://cityofdanapoint.sharefile.com/d-sdff0d32c2e5d4a0fb590f15788fec02b

We offered as evidence of Monarch HOA Approval of homes to become bigger and wider and permitted to-date by City of Dana Point. This is fact and critical to show course of dealings for Monarch Bay ACC and Board as well as City of Dana Point. Our remodel and ADU truly conforms with existing homes in Monarch and on our street. Once again take the time to drive down our street and verify for yourselves prior to any Planning Commission final vote. Our remodel and ADU plans truly fit into prior approved HOA and permitted by City of Dana Point Homes. Once again, our Architect only has 3 minutes, so we wanted to submit these homes accordingly. There are many more like 430 monarch our next store neighbor with two story home tear down that we believe was just permitted. We also understand that at 317 Monarch the ACC approved this home in the mall that is currently 2239 SF and approved to 4282 SF. We reserve the right to submit further evidence of current homes approved by Monarch ACC and to be permitted by City of Dana Point. These 2 extra homes are just a few of many Monarchs ACC approvals vs 432 Monarch Bay Remodel and ADU Unit. The facts need to be reviewed by the City of Dana Point Planning Commission.

We also own our land and one of our appraisals by one of three MIA appraisers stated we were a two-story home hence the high land price we paid in June 2020.

In closing we are hopeful Planning Commission takes the time to truly understand the facts regarding our permit process and how many homes on our street and below in the mall have already been approve by HOA and permitted by City of Dana Point which allowed for those owners to enjoy their new homes with their friends and families. We have filed our plans to meet City Required ADU and current codes and anything short of approval would not follow case law for ADU Units submitted and historic data for Monarch that has already been approved and permitted by City of Dana Point as previously stated.

Regards

Timothy and Mary McFadden

December 12, 2022

To: City of Dana Point

Re: 432 Monarch Bay Drive

From: Timothy and Mary McFadden, Owners

Beginning in 2016, new California laws have made it easier for residents to build an Accessory Dwelling Unit (ADU), also called a "granny flat," on their property — a self-contained living unit averaging 750 square feet. The state hoped ADUs would help alleviate housing shortages and high housing prices, providing places to live for family members, students, in-home health care providers, the disabled, and others at below-market prices within existing neighborhoods."

Although hundreds of California communities have written their own ADU ordinances incorporating the state's new rules, the City of Dana Point has not for homes located in Coastal Zone, which represents 45% of all homes in Dana Point. The city of Dana Point has spent hundreds of thousands of dollars developing ADU ordinances (see attached City of Dana Point Agenda Report 08.09.21 staff agenda ADU Coastal Zone 11.22.21) but carved out Coastal Zone Homes which is inclusive of our home at 432 Monarch Bay Drive. The City Planner told us that the Dana Point City Attorney has mandated to Planners that all Coastal Zone Properties must meet the repealed and replaced Section 9.07.210 Second Dwelling Units (dated 8.13.96) vs using the newly passed Section 9.07.210 (08/09/21 stated above) and our ADU Building Permit plan submittal must meet the 1996 ordnance which does not comply with ADU California State Laws. It is unacceptable that over half (55%) of the homes in Dana Point have City Ordinance that allows for much larger ADU units and limits parking requirements which is more in line with State ADU Laws.

Our ADU plans meet the much more restrictive City of Dana Point Ordinance by having to follow the 1996 ordinance (which the newer ordinance states was repealed and replaced). This caused our ADU unit to be only 30% of existing Home and required an ADU Parking area. 432 Monarch plans meet the 1996 ADU Ordinance and quite frankly should be permitted to follow the state law ADU and new Dana Point ADU Ordinance without being carved out. This would allow our ADU unit to be approximately 1100 Square Foot Attached ADU Unit versus the much smaller one being presented tonight. We have confirmed with Staff of Dana Point Planning that in the event City of Dana Point is forced to follow State Law we will be able to amend the size of our ADU to meet State Law at that time.

In April 2021, Dana Point McFadden Family Trust (Tim and Mary McFadden, Trustees "McFadden's") submitted plans for an ADU with the City of Dana Point after exhausting all attempts with Monarch Bay ACC committee and MBA Board of Directors **to accommodate an alternative for our family's needs**. Our ADU building plans will allow us to create a place for Mary's elderly handicapped father and our three children, to live in and enjoy our property under ADU State Law in the State of California.

Our submittal included an attached ADU to our single-family residence in Monarch Bay Drive, plus an approved HOA Remodel to our home. We read the applicable statutes and concluded that our project was exempt from needing a Coastal Development Permit (CDP), but the City of Dana Point Staff stated since we live in Coastal Zone, we must submit for a CDP Permit and adhere to the 1996 ADU Ordinance.

After several emails and meetings with Dana Point Staff under advice of their City Attorney the City still insisted we needed a CDP and refused to review our initial ADU applications and also many amended plans were not permitted to be submitted to the City for review. After 14 Months of this back-and-forth denial by City of Dana Point to accept for review of remodel and ADU Plans the McFadden's eventually filed a modified ADU plan that complied with the outdated 96 ADU Ordinance on June 1, 2022, which the City of Dana Point took into Plan Check.

Working with the City of Dana Point for 14 Month was a delay to even accept our Building plan submission into City for Plan Check. Finally On June 1, 2022, 432 Monarch Remodel was given Building Permit Number BLD 22-1007 and ADU Plans were given Building Permit Number BLD 22-1008. After Several months of Plan Checks we received confirmation on 10/06/2022 that both Building Permits for Remodel and ADU Unit were deemed complete, and the next step would be Planning Commission.

The city of Dana Point sent out a Public Notice for a November 2022 meeting, but the public notice did not identify our ADU Building Permits accurately thus we were forced to delay, and the City agreed to amend and update the Public Notice to reflect our actual building permit requests and acknowledge our ADU. The notice was resent for the December 12, 2022 Planning Commission Meeting. This once again has delayed our permit process by another month.

The fact that City of Dana Point has never adopted a formal regulation interpreting the [state's ADU] statute for Costal Zone Properties is evident by carving out Coastal Zone Properties from the new ADU Ordinance and forcing Coastal Zone Properties to follow 96 ADU ordinance. This carve out has caused McFadden's major issues for our ADU Plan Delays, extensive financial costs, time, and the City is not in compliance with State ADU Laws and or Coastal Commission.

See the very good news for McFadden's for our Approval Process with Planning: a favorable Final Ruling of facts very similar to our facts and hardships with trying to obtain final permit for remodel and ADU unit under California State Law. See below:

"A most recent Final Ruling (Riddick-v-Malibu case 21SMCP006655 Honorable Mark A. Young dated July 26, 2022" – (Malibu Case ADU 07/06/2022 File - Judge Final Ruling in favor of Homeowner, Complaint, and Opening Brief Attached) and request this case and "Final Ruling" become a matter of record for our Planning Commission Review prior to any ruling by Planning regarding our Building plans. We also understand the Judge "cited the fact that the Coastal Commission issued memos to guide coastal city governments like City of Dana Point (from April 2017 to April 2020) on implementing state ADU law in the coastal zone.

Until the commission abruptly changed course in 2022 after a meeting with the city of Malibu its guidance consistently stated that the construction or conversion of an [ADU] contained within or directly attached to an existing single-family residence was exempt from a CDP. We are confident that the City of Dana Point has had numerous conversations with Coastal regarding this matter thus McFadden's feel they should not have to file a CDP for our ADU Unit plans." We request the opportunity to update our Plans to remove the CDP from being required by City of Dana Point prior to Planning Commission decision regarding our plans and permits. The city of Dana Point is legally obligated to review an ADU application within 60 days of deeming it complete. This has not been done to date.

The court went on to say: "There are two simple questions 1) whether the new ADU structure met the requirements of California law and 2) whether it was attached to the main house or detached from the main house." In McFadden's case, our ADU Plan being presented to the Planning Commission is legally compliant and attached to the main house thus we also answer Yes to BOTH simple questions.

For the record, does the City of Dana Point require HOA approval prior to submitting a building permit for remodel and or ADU Unit? This is a vital fact to understand, thus please address for us. I know our meeting with Staff at City of Dana Point stipulated that the City would review our plans under City Building Codes and or City Ordinances and would not get involved between a homeowner and their HOA.

- If this is not the case and the City of Dana Point requires 100% of the building permits to have HOA approval prior to obtaining Planning Commission approval and or City Council approval, we need to understand this new provision of REQUIRD HOA APPROVAL within City of Dana Point so we can submit evidence to support us under ADU California Law regarding HOA and ADU Approval. We know in the past HOA approval is not necessary to obtain a building permit and or ADU Unit under California Laws. Please contact us with confirmation so we can submit evidence as needed so we are not further delayed with our approval process.

Most of the letters sent to the City do not state that ADU is covered under State Law and the fact that current Monarch Association CCRs must be updated to reflect State law and not delay ADU permit process that follows City ADU requirements and or California State Laws. Most of the letters are <u>template letters</u> stating the same thing and filled with emotion vs taking the time to truly understand the full facts of our two years ordeal with Monarch HOA Board, and ACC Committee members (Full file upon request and very important to establish this fact in event of appeal and or legal proceedings to protect our rights and pending our question above to Planning Commission regarding HOA Approval being necessary). Many of the owners, following the direction of Monarch Bay leaders state that an ADU must be a rental unit as City of Dana Point understands ADU may be built for Family Members (1 Government Code 65852.150 included in <u>ADU december 2020 handbook – Attached</u>). We understand that Monarch Bay is updating CCRs at this time and I have told the current President to make sure the new ADU law is included with this update. The ADU Handbook offers great support for our ADU Unit being approved by the Planning Commission.

There are too many facts to put into this letter, but we will reserve the right to utilize all the facts regarding all ACC and Board material at appeal and our legal as needed and once Planning Commission addresses the need for HOA approval prior to City issuing final building permit. Once again Monarch has not **<u>attempt to accommodate an alternative</u>** to our planned ADU plan to-date.

We have invited City of Dana Point Staff and now we will invite Planning Commission to visit 432 Monarch and see the massive homes on our Street and below in the mall (44 of 214 total homes in Monarch Bay) that have been approved by Monarch ACC and permitted by City of Dana Point. Our home is very small and the ADU addition is well within what has been approved by Monarch for many years all around us. In fact, many of the homes backing to PDH and in the mall were "Secretly approved to go much higher and wider" and to have "Water Features" without any disclosure to Mall Residence with CCR and ACC changes when all of the massive Monarch Governing Documents were changed to reflect the "All or Nothing" was removed to Leased land in 2012. Two of the homes that benefited by this hidden change are 429 Monarch and 431 Monarch that were able to build monstrosities backing to PCH by increasing the floor elevation of the home by 5 to 7 feet above existing grade and take views away from our home towards mountain view and mall tree areas. With all the approvals of Monarch HOA and Permitted Tear Downs and remodels on our street all we have is our very small home surrounded by Massive approved and Permitted by City of Dana Point tear downs.

As previously stated, Monarch HOA to date has not made any **<u>attempt to accommodate an alternative</u>** to our planned ADU plans. No accommodation has been given to our current ADU plans and the ACC turned down a 3-foot increase "tear down" separate plan with subterranean level which did not include an ADU Unit that would have minimized any view impact to homes since they already have homes that were approved at 5 to 7 feet above grade on PCH as previously stated. This plan would cost McFadden's 750K or more due to subterranean and we were willing to do this, and Lisa Klasky denied the plans thus we have no alternative but to build ADU under state law. Our architect contacted to propose this alternative, but Lisa Klasky flatly denied this plan versus our ADU plans.

We sent out another letter to Monarch Owners on Monday 12/05/22 once again trying to explain the facts since most owners are busy and do not know the facts of our over two-year process of getting our home remodeled. <u>See attached: Letter 432 Monarch Community McFadden 12.05.22 Sent USPS.</u>

We also have just been told by City of Dana Point Staff member by email this morning that our past emails, submitted documents, and others regarding this permit process from day one has not been forwarded to planning commission to-date thus not be a part of our public record as needed. We were told all we needed to do was request this in writing. Please accept this as our request to allow all parties to see the facts regarding our permit process and enter all of our emails into record.

We requested and received (Link see below) Dana Point public records for 15 homes located in the mall that have been HOA Approved and Permitted by City of Dana Point on our street and located see attached link:

- https://cityofdanapoint.sharefile.com/d-sdff0d32c2e5d4a0fb590f15788fec02b

We offered as evidence of Monarch HOA Approval of homes to become bigger and wider and permitted to-date by City of Dana Point. This is fact and critical to show course of dealings for Monarch Bay ACC and Board as well as City of Dana Point. Our remodel and ADU truly conforms with existing homes in Monarch and on our street. Once again take the time to drive down our street and verify for yourselves prior to any Planning Commission final vote. Our remodel and ADU plans truly fit into prior approved HOA and permitted by City of Dana Point Homes. Once again, our Architect only has 3 minutes, so we wanted to submit these homes accordingly. There are many more like 430 monarch our next store neighbor with two story home tear down that we believe was just permitted. We also understand that at 317 Monarch the ACC approved this home in the mall that is currently 2239 SF and approved to 4282 SF. We reserve the right to submit further evidence of current homes approved by Monarch ACC and to be permitted by City of Dana Point. These 2 extra homes are just a few of many Monarchs ACC approvals vs 432 Monarch Bay Remodel and ADU Unit. The facts need to be reviewed by the City of Dana Point Planning Commission.

We also own our land and one of our appraisals by one of three MIA appraisers stated we were a two-story home hence the high land price we paid in June 2020.

In closing we are hopeful Planning Commission takes the time to truly understand the facts regarding our permit process and how many homes on our street and below in the mall have already been approve by HOA and permitted by City of Dana Point which allowed for those owners to enjoy their new homes with their friends and families. We have filed our plans to meet City Required ADU and current codes and anything short of approval would not follow case law for ADU Units submitted and historic data for Monarch that has already been approved and permitted by City of Dana Point as previously stated.

Regards

Timothy and Mary McFadden

BRIAN T. HODGES, Wash. Bar No. 31976*
Email: bhodges@pacificlegal.org
DAVID J. DEERSON, No. 322947
Email: ddeerson@pacificlegal.org
Pacific Legal Foundation
555 Capitol Mall, Suite 1290
Sacramento, California 95814
Telephone: (916) 419-7111
Facsimile: (916) 419-7747

Attorneys for Petitioners
**pro hac vice admission pending*

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

WEST JUDICIAL DISTRICT

JASON and ELIZABETH RIDDICK; and RENEE SPERLING,

Petitioners,

v.

CITY OF MALIBU; MALIBU CITY COUNCIL; and MALIBU PLANNING DEPARTMENT,

Respondents.

No. 21SMCP00655

PETITIONERS' OPENING BRIEF

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

Pages(s)

TABLE OF CONTENTS ii
TABLE OF AUTHORITIES iii
LEGAL BACKGROUND 1
STATEMENT OF FACTS 2
STANDARD OF REVIEW 5
ARGUMENT 5
I. MALIBU MUST APPROVE THE ADU ON A MINISTERIAL BASIS 5
A. The Riddicks' proposal is exempt from the requirement to obtain a CDP 5
B. The Coastal Commission's January 2022 memo does not change this 8
C. State law compels the approval of the Riddicks' second application 9
II. THE CITY COUNCIL'S DECISION IS NOT SUPPORTED BY EVIDENCE 10
1. Coastal Commission guidance 11
2. Other analytical errors 13
III. MALIBU VOLATED THE HOUSING ACCOUNTABILITY ACT 13
CONCLUSION 15
DECLARATION OF SERVICE 16

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Page(s)

Cases

City of Grass Valley v. Cohen (2017) 17 Cal. App. 5th 567 8

Delaney v. Superior Court (1990) 50 Cal. 3d 785 6-7

Dep't of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (2006) 40 Cal. 4th 1 12

Duncan v. Dep't of Pers. Admin. (2000) 77 Cal. App. 4th 1166 .... 5, 8

English v. City of Long Beach (1950) 35 Cal. 2d 155 12

Guilbert v. Regents of Univ. of Cal. (1979) 93 Cal. App. 3d 233 11

Kaatz v. City of Seaside (2006) 143 Cal. App. 4th 13 7

Lungren v. Deukmejian, 45 Cal. 3d 727 (1988) 6

McAllister v. Cal. Coastal Comm'n (2009) 169 Cal. App. 4th 912 5

Pinheiro v. Civil Service Com. for Cty. of Fresno (2016) 245 Cal. App. 4th 1458 12

Security Nat'l Guaranty, Inc. v. Cal. Coastal Comm'n (2008) 159 Cal. App. 4th 402 2

Topanga Ass'n for a Scenic Cmty. v. Cty. of L.A. (1974) 11 Cal. 3d 506 .... 5, 10-11

Toyota of Visalia, Inc. v. New Motor Vehicle Bd. (1987) 188 Cal. App. 3d 872 5

Venice Coalition to Preserve Unique Cmty. Char. v. Cty. of L.A. (2019) 31 Cal. App. 5th 42 7

Yamaha Corp. of Am. v. State Bd. of Equalization (1999) 19 Cal. 4th 1 8

State Statutes

Civ. Proc., § 1085 10

Civ. Proc., § 1094.5 10

Gov. Code, § 65589.5 14-15

Gov. Code, § 65852.150 1

Gov. Code, § 65852.2 .... 1, 6, 9-10

Gov. Code, § 65852.22 12

Gov. Code, § 65859.5 14

Gov. Code, § 65943 14

Pub. Res. Code, § 3000, *et seq.* 1

Pub. Res. Code, § 30500 2

Pub. Res. Code, § 30600(a) 2

Pub. Res. Code, § 30610 .... 5, 9

State Regulations

Cal. Code Regs., tit. 14, § 13250(a)(1) 2, 5, 9
Cal. Code Regs., tit. 14, § 13250(a)(1)–(2) 7

Miscellaneous

City Council Resolution No. 21-47 1
Merriam-Webster.Com Dictionary, https://www.merriam-webster.com/ 6

This petition arises from Jason and Elizabeth Riddick's application to build a small Accessory Dwelling Unit (ADU) designed to care for and accommodate Renee Sperling, Elizabeth's mother. The Riddicks and Renee challenge two decisions made by the City. First, on administrative mandamus, the Riddicks seek reversal of Malibu City Council Resolution No. 21-47, which unlawfully denied their original application to construct an ADU attached to their home. Second, on traditional mandamus, the Riddicks challenge the City's refusal to approve an updated ADU application on a ministerial basis as required by Gov. Code, § 65852.2, subd. (b).

The evidence in the Administrative Record is relevant to the petition for traditional mandamus, as are the allegations and documentary exhibits in the Verified Petition. However, only Tabs 1–189, 255–257, and 259–260 of the Administrative Record are to be considered in relation to the petition for administrative mandamus. That is because only the evidence in these tabs was available to the Malibu City Council when it adopted Resolution No. 21-47.

LEGAL BACKGROUND

To address California's "severe housing crisis," *see* Gov. Code, § 65852.150(a), the state legislature established a statewide framework for owners of existing residential properties to obtain by-right permits to create ADUs. *See id.* §§ 65852.150–65852.22. Among other things, the ADU laws prohibit local governments from imposing lot coverage limitations that would not permit at least an 800-square-foot ADU with four-foot side and rear yard setbacks. Gov. Code, § 65852.2(c)(2)(C). They also require that, for governments which have not adopted a local ordinance in accord with state ADU law, a permit application to create an ADU must be decided "ministerially without discretionary review." Gov. Code, § 65852.2(b). However, subdivision (l) of Section 65852.2 provides that "[n]othing in this section shall be construed to supersede or in any way alter or lessen the effect of application of the California Coastal Act of 1976[.]" Thus, a key dispute in this case focuses on whether or not the Riddicks' proposal is subject to Malibu's Local Coastal Program (LCP).

The Coastal Act, Pub. Res. Code, § 3000, *et seq.*, requires local governments with

/ / /

/ / /

jurisdiction over Coastal Zone lands to adopt an LCP,[1] which must be certified by the California Coastal Commission. Pub. Res. Code, § 30500. Chapter 7 of the Coastal Act provides that, with certain express exemptions, any person seeking to perform development in the coastal zone "shall obtain a coastal development permit [(CDP)]." Pub. Res. Code, § 30600(a). Among the exemptions are "[i]mprovements to existing single-family residences," which typically do not require a CDP. This includes "[a]ll fixtures and other structures directly attached to a[n existing single-family] residence." Cal. Code Regs., tit. 14, § 13250(a)(1). Malibu's certified LCP provides for an identical exemption. Local Implementation Plan (LIP) § 13.4.1.

Between April 2017 to April 2020, the Coastal Commission issued three guidance memoranda intended to help local governments implement state ADU law in the coastal zone. With specific regard to the CDP exemptions, the memos state that "the construction or conversion of an [ADU] contained within or directly attached to an existing single-family residence" would generally be exempt as an improvement to a single-family residence. (AR 3553, 3560–61). By contrast, "[g]uest houses and 'self-contained residential units,' i.e. detached residential units" are not exempt (AR 3553, 3560–61).

In January 2022, five months after the City Council's decision and two months after the present action was filed, the Coastal Commission issued a fourth memorandum in which it changed its policy toward attached ADUs. It explains that "the Commission reevaluated its position" and determined that "the creation of a self-contained living unit, in the form of an ADU, is not an 'improvement' to an existing" residence" and therefore should not qualify for an exemption to the CDP requirement. The Coastal Commission based its position on a finding that some ADUs "could have coastal resource impacts that make exemptions inappropriate[.]" (AR 3567).

STATEMENT OF FACTS

Renee Sperling is an octogenarian who has lived in southern California her entire life. (AR 517, 3593) She has served the community as a schoolteacher, a college professor, and an attorney.

[1] An LCP is typically comprised of both a Land Use Plan (LUP), which sets forth general coastal policies, and a Local Implementation Plan (LIP), which provides the implementing ordinances to carry out the policies of the LUP. *See Security Nat'l Guaranty, Inc. v. Cal. Coastal Comm'n* (2008) 159 Cal. App. 4th 402, 408 n.2.

(AR 517). Renee once owned the subject house at 6255 Paseo Canyon Drive in Malibu, California. When her daughter Elizabeth married Jason Riddick, Renee deeded them the home to raise their three children, (AR 1969–70), and moved into a small apartment in Los Angeles. (AR 3594). Renee suffers from numerous ailments, including glaucoma, arthritis, asthma, and osteoporosis. (AR 551, 3593–94). She is disabled and severely immunocompromised. (AR 551). According to Renee's physician, even the common cold could have a devastating effect on her health. (*Id.*).

Given California's official policy of encouraging ADUs, the Riddicks determined that an ADU attached to their main residence was the ideal solution for providing Renee with safe housing in which she could age in place with the loving care of her family. Pet. ¶ 26. The Riddicks worked closely with their Homeowner's Association (HOA) and with their hired architect to create plans that suited their needs and those of Renee, their surrounding neighbors, and the HOA, and which met all of the requirements of the state's ADU law. Pet. ¶ 27. (AR 288–92, 1933–35). Because the project contemplated shifting some of the existing floor-space from the primary residence to the ADU, the plans included minor expansions of the primary residence as a compensatory measure—the proposed ADU would intrude on the existing master bath, necessitating the construction of a new bathroom in the primary structure. Pet. ¶ 28. (AR 1965) In total, this planned compensatory addition to the main residence constituted about 44–60 square feet of new floor space. *Id.*

On July 10, 2020, the Riddicks submitted their ADU application to the City. (AR 1966–68). Despite the LCP's exemption for attached structures, the City processed the application as one for a Coastal Development Permit. (AR 1967). On October 19, 2020, Assistant Planner David Eng sent the Riddicks a "letter of project incompleteness," (A.R. 2125–28), and explained that the project could not obtain a CDP because it did not comply with the LCP's "setbacks and maximum allowed Total Development Square Footage (TDSF) area" (Pet. Exh. D).

In response, Mr. Riddick penned a letter detailing his position that the project should not be required to obtain a CDP in the first place because it was exempt under the LCP. (AR 2135–39). Mr. Riddick also included a copy of the April 2020 Ainsworth memorandum, arguing that it bolstered his interpretation of the applicable law. (AR 2138–46).

Mr. Mollica replied over two months later, (AR 2247–51), insisting that their project was

subject to Malibu's LCP. (AR 2252–54), and failing to address the Riddicks' arguments and the substance of the Coastal Commission guidance. Faced with the City's reluctance to advance the ADU application as required by state law, the Riddicks submitted a letter formally requesting a reasonable disability accommodation (RRA) under Malibu LIP Section 13.30. (AR 2304).

At its hearing on June 7, the Planning Commission adopted Resolution No. 21-51, denying both the CDP and the RRA. (AR 2713). Despite finding that the project "will not adversely impact coastal resources," (AR 1476), the Commission's basis for denial was that project could not be configured to comply with the LCP's TDSF, setback, and total impermeable lot coverage (TILC) requirements. (AR 1475). Regarding the exception for attached structures, Mr. Rusin suggested at the hearing that the exemption provision did not apply because its terms exclude "accessory self-contained residential units" from the CDP exception. (AR 3649–50). No one from the City acknowledged the Coastal Commission guidance concluding that *attached* ADUs are to be distinguished from "guest houses or accessory self-contained residential units," which are detached structures.

The Riddicks appealed Planning Commission Resolution No. 21-51 to the Malibu City Council, (AR 2715–18, 1205), which denied the appeal in Resolution No. 21-47. (AR 11). At least two Councilmembers suggested that the true reason for denial was not the ADU but the compensatory additions to the primary residence. (AR 3598–3600).[2]

Following the City Council decision, the Riddicks submitted an updated application with modified plans. The new plans were substantially identical to those in the original application, except that all proposed additional square footage was designated as part of the ADU; no additional square footage would be added to the main residence. (AR 3148, 3153). The Riddicks requested ministerial review of this new application per state law. (AR 3312, 3325). On October 25, 2021, City Attorney John Cotti stated that the City would still require a CDP and would not review the application a ministerial basis. (AR 3455). This action followed.

[2] For example, Mayor Grissanti stated that "if all the area that's the master bath was designated as part of the ADU, I would find no way not to vote for this." (AR 3599).

STANDARD OF REVIEW

In determining whether an agency has failed to proceed according to law, the Court exercises its independent judgment and gives no deference to the agency's interpretation of the law. *McAllister v. Cal. Coastal Comm'n* (2009) 169 Cal. App. 4th 912, 921. To the extent that an agency has acted within its jurisdiction and according to law, a reviewing court still "must scrutinize the record and determine whether substantial evidence supports the administrative agency's findings and whether these findings support the agency's decision," resolving doubts in favor of the agency. *Topanga Ass'n for a Scenic Cmty. v. Cty. of L.A.* (1974) 11 Cal. 3d 506, 514. In its review, the Court must consider the whole "record of the proceeding before the administrative agency." *Toyota of Visalia, Inc. v. New Motor Vehicle Bd.* (1987) 188 Cal. App. 3d 872, 881. Regardless of the claim at issue, a court always reviews questions of law *de novo*. *Duncan v. Dep't of Pers. Admin.,* (2000) 77 Cal. App. 4th 1166, 1174.

ARGUMENT

I. MALIBU MUST APPROVE THE ADU ON A MINISTERIAL BASIS

A writ of traditional mandamus is warranted because the Riddicks' project is exempt from the requirement to obtain a CDP. This conclusion is compelled by Malibu's LCP, by Coastal Act regulations, and by the Coastal Act itself. And because it is exempt, the project is governed by statewide ADU law, under which it must be approved on a ministerial basis.

A. The Riddicks' proposal is exempt from the requirement to obtain a CDP

The LCP provides that improvements to existing single-family residences are exempt from the CDP requirement. LIP § 13.4.1. This exemption is mandated by the Coastal Act, which provides that "[n]otwithstanding any other provision of [this Act], no coastal development permit shall be required" for "[i]mprovements to existing single-family residences." Pub. Res. Code, § 30610(a). This exemption covers "[a]ll fixtures and other structures directly attached to a residence[.]" Cal. Code Regs., tit. 14, § 13250(a)(1). The LCP contains nearly identical provisions. LIP § 13.4.1.

The authorities, therefore, provide that "all fixtures and other structures directly attached" to a single-family residence are exempt from the CDP requirement, and the Riddicks' project contemplates an ADU that is directly attached to their single-family home. Yet Respondents rely

on other language from the LCP which they argue takes the ADU out of the exemption. Specifically, the City highlights a clause in Section 13.4.1 excluding "guest houses or accessory self-contained units" from exemption, and suggests that the Riddicks' project falls under this category. This argument suffers from two fundamental flaws. First, the Riddicks' ADU is not a "guest house," and it is probably not an "accessory self-contained unit" either. Second, even if it were, such structures are only disqualified from the CDP exemption when they are detached from the main residence.

The Riddicks' proposed ADU is not a "guest house." That term is defined in Malibu's LCP and it does not apply. For example, a "guest house" under the LCP's definition contains no kitchen. But the Riddicks' proposed ADU does contain a kitchen. *See* Gov't Code, § 65852.2(j)(1) (defining ADUs as including "permanent provisions for . . . cooking[.]"). Similarly, the LCP's definition provides that a "guest house" is "not rented or otherwise used as a separate dwelling," while the Riddicks' ADU is to be utilized as a separate dwelling for Renee.

It is also doubtful whether the ADU is an "accessory self-contained residential unit." While that term is not defined in the LCP, the plain meaning of the phrase "self-contained" does not apply to the Riddicks' proposed ADU, which shares walls and utility connections with the main residence. In ordinary use, the term "self-contained" means "complete in itself" or "independent."[3] The proposed ADU could not stand or operate free from the primary residence and is therefore not "self-contained" in the ordinary sense. Respondents have offered no interpretation of this provision which gives effect to the term "self-contained." (*Compare* AR 16 *with* AR 540); *see Delaney v. Superior Court* (1990) 50 Cal. 3d 785, 798–99 ("Significance should be given, if possible, to every word of an act.") (internal citations omitted).

Regardless, even if the Riddicks' ADU were a guest house or a self-contained unit, it would still be exempt from the CDP requirement because it is a structure directly attached to their residence. The disqualification of guest houses and self-contained units from the exemption applies

---

[3] *See self-contained*, Merriam-Webster.Com Dictionary, https://www.merriam-webster.com/dictionary/self-contained (last accessed April 24, 2022); *see also Lungren v. Deukmejian*, 45 Cal. 3d 727, 735 (1988) ("Words used in a statute . . . should be given the meaning they bear in ordinary use.").

only to units which are detached. LIP Section 13.4.1 creates two broad categories of exempted development: first, "all fixtures and structures directly attached to the residence," and second, "those structures normally associated with a single family residence, such as garages, swimming pools, fences, storage sheds and landscaping[.]" It is this second category, and not the first, which is written to exclude guest houses and self-contained units. And it is plain that this second category contemplates only *detached* structures. After all, structures like garages, storage sheds, and even guest houses may be attached or detached. *See, e.g.,* LIP § 2.1 (Guest houses may be "attached or detached living quarters[.]"). An attached garage, for example, would fall under the first category as an attached structure, even though garages in general would otherwise fall under the second category as structures normally associated with a single-family residence. By the same token, an attached ADU also falls under the first category, even if a detached ADU might fall under the second and be subject to the limiting language. *See Kaatz v. City of Seaside* (2006) 143 Cal. App. 4th 13, 36.

This conclusion becomes even more certain when viewed in the context of the Coastal Act regulations, from which the LCP's exemption language is taken nearly verbatim. While the LCP exemption is written as a single paragraph, its source is divided into separately enumerated subdivisions. *See* Cal. Code Regs., tit. 14, § 13250(a)(1)–(2). The first category—for all attached fixtures and structures—is set forth in subdivision (a)(1). The second category—for structures normally associated with a single-family residence—is contained in subdivision (a)(2). The language about guest homes and self-contained units is found in subdivision (a)(2), but not in subdivision (a)(1). Thus, that exclusion applies only to the second category. *See Kaatz*, 43 Cal. App. 4th at 40 (applying *noscitur a sociis*). It does not apply to attached structures.

Finally, and not to overlook the obvious, both the LCP and the Coastal Act regulations exempt "*all* fixtures and other structures directly attached to a residence." (emph. added). *See Delaney*, 50 Cal. 3d at 798–99 ("Significance should be given, if possible, to every word of an act.").

Because the Riddicks' proposed ADU is attached to their main residence, it is exempt from the CDP requirement. *See Venice Coalition to Preserve Unique Cmty. Char. v. Cty. of L.A.* (2019)

31 Cal. App. 5th 42, 53 (Coastal Act's CDP exemption for improvements includes additions). The limiting language about guest houses and self-contained units does not apply.

B. The Coastal Commission's January 2022 memo does not change this

In January, 2022, two months after the instant action was filed, the Coastal Commission "reevaluated its position" on CDP exemptions,[4] and "found that the creation of a self-contained living unit, in the form of an ADU, is not an 'improvement to an existing [single-family residence]. Rather, it is the creation of a new residence. This is true regardless of whether the new ADU is attached to the existing [residence] or is in a detached structure on the same property." (AR 3567). Moreover, "based on the finding that a variety of types of [ADUs]—including both attached and detached [ADUs]—could have coastal resource impacts that make exemptions inappropriate," the Coastal Commission no longer considers attached ADUs to be exempt. (AR 3567).

At the outset, it must be noted that at all times relevant to this dispute, the Coastal Commission's position was that attached ADUs are exempt from the CDP requirement. *Cf. City of Grass Valley v. Cohen* (2017) 17 Cal. App. 5th 567, 580 (mandamus court applies the law in effect at the time the administrative decision was made). Even so, it must also be noted that the Coastal Commission's guidance on this issue is just that—guidance, not law. *See Yamaha Corp. of Am. v. State Bd. of Equalization* (1999) 19 Cal. 4th 1, 11; *id.* at 11 n.4 (*see also* AR 1888 (Coastal Commission "guidance does not automatically rewrite the city's certified LCP.")). The meaning and effect of the exemption provisions at issue, like all questions of law, must be reviewed *de novo*. *See Duncan*, 77 Cal. App. 4th at 1174.

There are several flaws with the Coastal Commission's latest interpretation. First, the memorandum does not address the plain language of the exemption, which refers to *all* attached structures. Instead, it asserts that an ADU application should be subject to a CDP because it involves "the creation of a new residence." That conclusion is dubious and finds no traction in the text of the exemption. The Government Code provides that—for utility connection purposes, at least—an

[4] Petitioners concede that this guidance may potentially be relevant to their traditional petition for writ of mandate. However, it was not released until long after the City Council's denial of the Riddicks' appeal below, and thus could not have been a part of the Council's decisionmaking process. It therefore has no relevance to the petition for administrative mandate.

ADU constructed on a lot with an existing residence "shall *not* be considered . . . to be a new residential use[.]" Gov. Code, § 65852.2(f)(2) (emph. added). Regardless, neither the LCP nor the Coastal Act regulations, both of which exempt *all* attached structures, makes any distinction between attached structures which do not constitute a new residence and those which do.

Moreover, the Coastal Commission's finding that even attached ADUs could impact coastal resources ignores the fact that the agency has, consistent with Coastal Act requirements, already codified specific categories of otherwise-exempt development that nevertheless require a CDP based on their risk of environmental impact.[5] In doing so, it did not include attached ADUs, nor did it include "new residences." If the Coastal Commission now considers attached ADUs in non-sensitive areas to carry an unacceptable risk of environmental impact, it may amend its regulations through notice and comment. Until then, the law remains that "no coastal development permit shall be required" for "improvements to existing single-family residences," including "all fixtures and structures directly attached" to the primary residence. *See* Gov. Code, § 30610(a); Cal. Code Regs., tit. 14, § 13250(a)(1); Malibu LIP § 13.4.1.

C. <u>State law compels the approval of the Riddicks' second application</u>

Because the Riddicks' project is exempt from the CDP requirement, the project need not conform with the restrictive setback and lot coverage requirements in Malibu's LCP. Instead, state ADU law controls.[6] Gov. Code, § 65852.2(b). Under those standards, the Riddicks are entitled to approval of their project.

Section 65852.2 sets out the "maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot zoned for residential use that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed[.]" Gov. Code § 65852.2(a)(6). Two of those design standards

---

[5] The Coastal Act authorizes the Coastal Commission to "specify, *by regulation*, those classes of development which involve a risk of adverse environmental effect" and which are therefore ineligible for exemption. Pub. Res. Code § 30610(a) (emph. added).

[6] Where a local agency has not adopted an ordinance pursuant to state ADU law, as Malibu has not, then an ADU application is governed directly by design standards provided in state law. *Id*. Where this is the case, the Government Code has preemptive effect, and any local regulations to the contrary are unenforceable. *Id.* §§ (a)(4), (b).

are directly at issue in this case. First, if there is an existing primary dwelling, the total floor area of an attached ADU shall not exceed 50 percent of the existing primary dwelling. *Id.* § (a)(1)(D)(iv). Second, a setback of no more than four feet from the side and rear lot lines shall be required for an ADU that is not converted from an existing structure. *Id.* § (a)(1)(D)(vii). The law also specifically prohibits the City from establishing a maximum square footage requirement that is less than 850 square feet, *id.* § (c)(2)(B)(i)-(ii), and from imposing any other size requirement—including those based on lot coverage—which would not permit at least an 800 square-foot ADU with four-foot side and rear yard setbacks. *Id.* § (c)(2)(C).

The Riddicks' modest proposal fits well within the applicable criteria. At 469 square feet (AR 1900) it measures less than 20 percent of the floor area of the main residence—far less than the 50 percent maximum imposed by state law. It also enjoys setbacks greater than four feet on both the side and rear yards. And the City is prohibited from imposing its more restrictive TDSF, TILC, and setback standards.

Furthermore, the Riddicks' second application must be approved on a ministerial basis. Gov. Code, § 65852.2(b) (City must "approve or disapprove the application ministerially without discretionary review" pursuant to the statewide design standards). And the City must decide the application within 60 days from the date it receives a completed application. *Id.* That decision is long overdue. The City's refusal to process the Riddicks' second application in this manner therefore constitutes a failure to perform a non-discretionary act with the law specifically enjoins. *See* Code Civ. Proc. § 1085.

II. THE CITY COUNCIL'S DECISION IS NOT SUPPORTED BY EVIDENCE

As explained above, the Riddicks are entitled to a traditional writ of mandate compelling Respondents to approve their ADU project. Separately, the Riddicks also seek a writ of administrative mandate overturning the City Council decision which denied their initial application.

In evaluating a petition for administrative mandate, the reviewing court must determine "both whether substantial evidence supports the administrative agency's findings and whether the findings support the agency's decision." *Topanga Ass'n for a Scenic Community v. Cty. of L.A.*, (1974) 11 Cal. 3d 506, 514-15; *see* Code Civ. Proc. § 1094.5(b). The court should not "speculate

as to the . . . basis for decision," but instead must determine whether the agency has demonstrated that its decision "bridge[d] the analytic gap between the raw evidence and ultimate decision[.]" *Topanga*, 11 Cal. 3d at 515. Mandamus is also appropriate where the agency failed to provide a fair hearing. *Guilbert v. Regents of Univ. of Cal.* (1979) 93 Cal. App. 3d 233, 241.

Resolution No. 21-47 presents a host of analytical errors, making numerous findings which cannot be supported by the evidence, and entering numerous conclusions which cannot be supported by its findings.

1. Coastal Commission guidance

Time and again throughout the permit process, the Riddicks raised then-effective Coastal Commission guidance confirming their position that an attached ADU is exempt from the CDP requirement, and specifically interpreting the terms "guest house or accessory self-contained unit" as referring only to detached structures. (AR 1111, 1213–14, 1624, 1496, 2163–64, 2306). The substance of this guidance was not addressed by any City staff or officials at any point in the record. (*See* AR 1624, in which Mr. Riddick asks Mr. Rusin "why haven't you addressed the only argument we made in my December 7, 2020 memorandum, which is that our attached ADU falls within the exception enumerated by Section 13.4.1 of Malibu's existing LCP? Your response does not even mention the exception, which is the only argument we made. Are you planning on completely ignoring what we wrote?").

For example, in response to the Riddicks' point that the Coastal Commission interpreted the exemption language to attached ADUs, Planning Director Mr. Mollica responded only that the Coastal Commission's guidance "does not automatically rewrite the city's certified LCP." (AR 1888). Similarly, the staff report to the City Council observed that "currently certified provisions of LCPs are not superseded by" ADU law. (AR 22; *see also* AR 3579). These protestations utterly fail to address the fact that the in-effect guidance directly interpreted the exemption language in a manner directly contrary to the City's interpretation. Thus, Resolution No. 21-47 failed to adequately address the determinative legal question presented below.

Instead, the substance of the Coastal Commission's guidance was left unaddressed by the City until after the adoption of Resolution No. 21-47. At a meeting to discuss the Riddicks' second

application, Mr. Mollica expressed, for the first time, that the City had received a previously undisclosed communication from the Coastal Commission indicating that it had modified the position represented in the April 2021 Ainsworth Memo. (AR 3302–03, 3323). According to Mr. Mollica, the Coastal Commission stated that the exemption for attached ADUs was actually meant to refer only to ADUs created by converting existing space, or to JADUs,[7] or to projects less than 500 sq. ft., or to some combination of these categories (*see* AR 3323)—a position that finds absolutely no support in the record. The Riddicks requested additional information about this undisclosed communication, which the City treated as a public records request. (AR 3302–03, 3323). The City responded with several documents, (AR 3404), none of which contained any suggestion that the Coastal Commission had in fact modified its position regarding the exemption for attached ADUs while either of the Riddicks' applications were under review.

The effect of the exemption language in LCP 13.4.1, on which the Coastal Commission guidance spoke directly, was the central argument raised by the Riddicks throughout the application process. Assuming that the Coastal Commission really had informed Malibu of its intention to modify its guidance, the City's decision to withhold that crucial information from the proceedings constitutes a denial of a fair hearing warranting reversal. *See Pinheiro v. Civil Service Com. for Cty. of Fresno* (2016) 245 Cal. App. 4th 1458, 1467(the "right to a hearing is violated if an administrative tribunal relies on evidence outside the record in reaching its decision.").[8]

Regardless, the complete failure, if not the willful refusal, of the City to engage with the substance of the in-effect Coastal Commission guidance represents a severe gap in their decisionmaking process. Mandamus is therefore appropriate.

---

[7] Junior Accessory Dwelling Units, or JADUs, are a subset of ADUs which are no more than 500 square feet and are contained entirely within a single-family residence. Gov. Code, § 65852.22(h)(1).

[8] *See also Dep't of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.,* (2006) 40 Cal. 4th 1, 11 ("The decision of the agency [] should be based on the record and not on off-the-record discussions from which the parties are excluded); *English v. City of Long Beach* (1950) 35 Cal. 2d 155, 158-59 ("[T]he right of a hearing before an administrative tribunal would be meaningless of the tribunal were permitted to base its determination upon information received without the knowledge of the parties.").

2. **<u>Other analytical errors</u>**

Several other flaws with the administrative decisionmaking process below call for mandamus as well. First, councilmembers relied on an assumption that the Riddicks had been given opportunities to revise the minimal alterations to their primary residence for compliance with Malibu's LCP. (AR 3607). That assumption is not only unsupported by the record; it is patently false. (AR 1112, 3633). City permitting staff did not raise any issues with the proposed alterations to the primary structure, (AR 3633), and the Riddicks had no reason to address any issues with the main residence—even eliminating those additions would not help, since the City maintained that the proposed ADU by itself brought the project out of compliance with the LCP.[9]

Next, the Resolution erroneously found that the Riddicks presented no evidence why it was medically necessary for Renee to live in a separated unit and not in the main house with the Riddicks, their children, and pets. (AR 3–4). Wrong. The Riddicks presented a note from Renee's physician addressing this need. (AR 665; *see also* AR 1752). Besides, it strains credulity to imagine that City officials and staff were unaware of the importance of social distancing for *any* senior citizen, let alone one with pre-existing immunodeficiency. (AR 3592).

Finally, the Resolution improperly denied the RRA upon the unsubstantiated finding that approving the accommodation would "undoubtedly have cumulative impacts on coastal resources as other property owners will undoubtedly seek similar reasonable disability accommodations." (AR 4–5). But in the very same paragraph, it explained that every interested City department had "reviewed the project and found that it will *not* adversely impact coastal resources." (AR 4) (emph. added); (*see also* AR 3622). Renee is either entitled to an RRA under the specifics of her application, the LCP, and related state and federal housing laws, or she is not. The City cannot base its denial of a non-hazardous disability accommodation on the fear that granting it would encourage other people to apply for hazardous accommodations.

III. MALIBU VOLATED THE HOUSING ACCOUNTABILITY ACT

---

[9] Of course, the Riddicks did indicate their willingness to adjust the proposal to address any issues with the compensatory expansion to the primary residence. (*see* AR 1493, 2067, 3163, 3600–01, 3603, 3635–36).

1 The Housing Accountability Act (HAA) provides that when a local agency seeks to
2 disapprove a housing development project that complies with all applicable law, it must base its
3 decision on written findings that the project will have a specific, adverse impact upon the public
4 health or safety. Gov. Code, § 65589.5(j)(1)(A)–(B). If the agency considers a proposal to be
5 inconsistent with applicable law, it must provide written documentation explaining that conclusion.
6 Gov. Code, § 65589.5(j)(2)(A).
7 For a housing proposal with fewer than 150 units, such documentation must be provided
8 within 30 days of the date that the application was "determined to be complete." Gov. Code,
9 § 65589.5(j)(2)(A)(i). Otherwise, "the housing development project shall be deemed consistent
10 applicable law. Gov. Code, § 65589.5(j)(2)(B). The phrase "determined to be complete" is defined
11 as meaning that "the applicant has submitted a complete application pursuant to [Government
12 Code] Section 65943." Gov. Code § 65589.5(h)(9). That section, part of the Permit Streamlining
13 Act (PSA), provides that an agency must make a written determination of completeness within 30
14 calendar days after receiving an application. Gov. Code, § 65943(a). If a written determination is
15 not made within 30 days, the application shall be "deemed complete." Gov. Code, § 65943(a).
16 The Riddicks' application was processed as one for a coastal development permit. The PSA
17 required Respondents to provide a written determination of completeness or incompleteness within
18 30 days. Yet the Planning Department did not make this determination until October 9, 2020—91
19 days after the Riddicks' application was submitted on July 10 of that year. (AR 2125). As a result,
20 the application was "deemed complete" by operation of Section 65943(a) on August 10, 2020, the
21 31st day after the application was filed, and was "determined to be complete" under the HAA on
22 that same day. Gov. Code, § 65859.5(h)(9). Therefore, if Respondents considered the project to be
23 inconsistent with applicable law, the HAA required them to issue written documentation explaining
24 the reasons for that conclusion by September 9th (*i.e.*, 30 days after the application was determined
25 to be complete). Yet the City did not provide any written explanation of the project's alleged
26 inconsistency with law until October 9, far exceeding that statutory deadline.
27 By operation of law, the project was "deemed consistent, compliant, and in conformity"
28 with all applicable provisions of law. Gov. Code, § 65589.5(j)(2)(B). And because the project was

deemed consistent with law, Respondents were prohibited from disapproving the project without making the findings required by the HAA. *See* Gov. Code, § 65589.5(j)(1)(A)–(B). The record is devoid of any such written findings because Respondents never made them. The City's denial of the Riddicks' project therefore violated the HAA and the Riddicks are entitled to an order compelling compliance with the HAA. Gov. Code, § 65589.5(k)(1)(A)(i)(II), (k)(1)(A)(ii).

Moreover, if the Court finds that Respondents acted in bad faith, it may bypass remand and direct them to approve the project. Gov. Code, § 65589.5(k)(1)(A)(ii). Here, although the Riddicks consistently raised the then-effective Coastal Commission guidance memoranda throughout the application process, they were never given any suggestion that Coastal Commission representatives had qualified the language from its published guidance in private communications with the City until Mr. Mollica averred as such at a meeting on October 6, 2021, after the City's initial permit denial. As described above, if this statement is true, then the ex-parte communication between the Coastal Commission and the City was vital evidence improperly withheld from the hearing. If, however, the statement was false, then it is evidence that Respondents denied the Riddicks' project in bad faith. That conclusion is compounded by the fact that the City entirely failed to engage with the substance of the Coastal Commission guidance and its interpretation of the exemption provision in the LCP which conformed precisely to the Riddicks' theory.

CONCLUSION

For the reasons stated above, this Court should grant Petitioners' requests for traditional and administrative mandamus and should enter an order directing compliance with the Housing Accountability Act, including an order that Respondents approve the Riddicks' project.

DATED: May 10, 2022.

Respectfully submitted,

BRIAN T. HODGES
DAVID J. DEERSON
Pacific Legal Foundation

By s/ David J. Deerson
DAVID J. DEERSON
Attorney for Petitioners

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF SERVICE

I, Kiren Mathews, declare as follows:

I am a resident of the State of California, residing or employed in Sacramento, California. I am over the age of 18 years and am not a party to the above-entitled action. My business address is 555 Capitol Mall, Suite 1290, Sacramento, California 95814.

I hereby certify that on May 10, 2022, I served the attached **PETITIONERS' OPENING BRIEF** in self- addressed envelopes deposited with the U.S. Postal Service to:

JOHN C. COTTI, Bar No. 193139
John.Cotti@bbklaw.com
TREVOR L. RUSIN, Bar No. 241940
Trevor.Rusin@bbklaw.com
BEST BEST & KRIEGER LLP
300 South Grand Avenue
25th Floor
Los Angeles, California 90071
Telephone: (213) 617-8100
Facsimile: (213) 617-7480

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 10th day of May, 2022, at Sacramento, California.

/s/ Kiren Mathews________________
KIREN MATHEWS

From: eservice@onelegal.com
To: Incoming Lit
Subject: eServe notification for JASON RIDDICK, et al. vs CITY OF MALIBU, et al.
Date: Tuesday, May 10, 2022 2:44:43 PM

INCOMING LITAGATION Has Been Electronically Served

Submitted	5/10/2022 11:44 AM PT by David Deerson
Case	JASON RIDDICK, et al. vs CITY OF MALIBU, et al. #21SMCP00655
Court	Superior Court of California, Los Angeles County (West District)
eServe recipient	INCOMING LITAGATION - IncomingLit@pacificlegal.org

Served Documents

- Brief (PETITIONERS' OPENING BRIEF)
- Notice of Motion

Download these documents on the Electronic Service page

If the link above doesn't work, copy this URL into your browser's address bar:
https://platform.onelegal.com/Eservice/Index/_CRdsXr-PUypBEsETW0w1Q

Thank you,
The One Legal Team

You are receiving this email in response to an order that was placed on www.onelegal.com
Get help on our Support Center or by email at support@onelegal.com.

InfoTrack US, Inc. 1400 North McDowell Blvd., Suite 300, Petaluma, CA 94954

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

West District, Santa Monica Courthouse, Department M

21SMCP00655 July 26, 2022
JASON RIDDICK, et al. vs CITY OF MALIBU, et al. 2:26 PM

Judge: Honorable Mark A. Young CSR: None
Judicial Assistant: K. Metoyer ERM: None
Courtroom Assistant: None Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Court Order

The Court, having taken the matter under submission on 7/25/22, now rules as follows:

FINAL RULING

LEGAL STANDARD

A writ of mandate lies "for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer[.]" (CCP, § 1094.5(a).) Pertinent questions include "whether the respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." (CCP, § 1094.5(b).)

When not involving a fundamental vested right, the Court's inquiry into abuse of discretion revolves around whether the findings are supported by substantial evidence in the light of the whole record. (CCP, § 1094.5(c); see Alpha Nu Assn. of Theta XI v. University of Southern California (2021) 62 Cal.App.5th 383, 408-409 ["review is limited to examining the administrative record to determine whether the adjudicatory decision and its findings are supported by substantial evidence in light of the whole record"].) Substantial evidence may be described as relevant evidence that a reasonable mind might accept as adequate to support a conclusion (California Youth Authority v. State Personnel Board (2002) 104 Cal.App.4th 575, 584-85), or evidence of ponderable legal significance which is reasonable in nature, credible and of solid value. (Mohilef v. Janovici (1996) 51 Cal.App.4th 267, 305 fn. 28.) In other words, the Court "may reverse an agency's decision only if, based on the evidence before the agency, a

reasonable person could not reach the conclusion reached by the agency." (Sierra Club v. California Coastal Com. (1993) 12 Cal.App.4th 602, 610.)

The petitioner bears a high burden of proof to demonstrate, by citation to the administrative record, that the evidence supports their position. (Strumsky v. San Diego County Employees Retirement Assn. (1974) 11 Cal.3d 28, 32; see LASC Local Rule 3.231(i).) "A trial court must afford a strong presumption of correctness concerning the administrative findings, and the party challenging the administrative decision bears the burden of convincing the court that the administrative findings are" not supported by substantial evidence. (Fukuda v. City of Angels (1999) 20 Cal. 4th 805, 817; see also Evid. Code, § 664.)

EVIDENTIARY ISSUES

Riddicks' request for judicial notice is GRANTED.

The City's request for judicial notice is GRANTED.

DISCUSSION

Petitioners presents two issues for review. First, the denial of Petitioners' proposed Project and second, the denial of their accommodation request. Petitioners argue that the City does not have substantial evidence to support the accommodation denial, and that the project is exempt from the City's CDP requirements.

Underlying Facts

On July 10, 2020, the Riddicks submitted their ADU application to the City. (AR 196668.) The City processed the application as a CDP. (AR 1967.) The City sent a "letter of project incompleteness" and explained that the project could not obtain a CDP because it did not comply with the LCP's "setbacks and maximum allowed Total Development Square Footage (TDSF) area." (Pet. Ex. D; AR 2125–2128.)

Mr. Riddick responded that the project should not be required to obtain a CDP as an initial matter because it was exempt under the LCP, and he included a copy of an April 2020 memorandum which he argued bolstered his interpretation of the applicable law. (AR 2135-2146.) After some back-and-forth between the parties, the Riddicks submitted a letter formally requesting a RRA under Malibu LIP section 13.30. (AR 2304.)

At its hearing on June 7, 2021, the Planning Commission adopted Resolution No. 21-51, denying both the CDP and the RRA. (AR 2713.) The Commission denied the project because it could not be configured to comply with the LCP's TDSF setback, and total impermeable lot coverage (TILC) requirements. (AR 1475.) The Commission denied the RRA because it found that i) housing could be met through reconfiguration of existing floor area, ii) the reasonable accommodation would require ongoing monitoring and administrative costs to determine that the ADU is occupied by a disabled person, and iii) it would set a precedent for exceeding the TDSF via applications for ADUs even though such exceedance was not required to accommodate the disabled person. (AR 1474-1480; see LIP §§ 3.6(F), (H) & (I).)

The Riddicks appealed the decision, which was denied by Resolution No. 21-47. (AR 11, 1205, 2715–2718.) Councilmembers suggested that the true reason for denial was not the ADU but the compensatory additions to the primary residence. (AR 3598–3600.) The Riddicks then filed modified plans, so that no additional square footage would be added to the main residence. (AR 3148, 3153.) The Riddicks requested ministerial review of this new application. (AR 3312, 3325.) On October 25, 2021, the City indicated that it would still require a CDP and would not review the application. (AR 3455.)

Petitioners also notes that Ms. Riddick's mother, Renee Sperling, has a need for the ADU. (Pet. ¶ 26.) Ms. Sperling is elderly and suffers from numerous ailments, including glaucoma, arthritis, asthma, and osteoporosis. (AR 551, 3593–94). Ms. Sperling is disabled and severely immunocompromised, where a common cold would risk death. (AR 551.)

Analysis

1. Were Petitioners required to Obtain a CDP under the LIP

Petitioners argue that the City's denial presents a host of analytical errors, making numerous findings which cannot be supported by the evidence, and entering numerous conclusions which cannot be supported by its findings. Principally, Petitioners argue that their project was exempt from the requirement to obtain a CDP and that the City's interpretation otherwise is unreasonable. (LIP § 13.4.1)

The Coastal Act, Pub. Res. Code section 3000, et seq., generally requires local governments to adopt an LCP, typically comprised of both a Land Use Plan (LUP) and a Local Implementation Plan (LIP). (Security Nat'l Guaranty, Inc. v. Cal. Coastal Comm'n (2008) 159 Cal.App.4th 402, 408 n.2.) Malibu's LIP § 13.4.1 provides for certain exemptions to improvements to "existing single-family residences[.]" This is specifically defined as "all fixtures and structures directly

attached to the residence and those structures normally associated with a single-family residence, such as garages, swimming pools, fences, storage sheds and landscaping but specifically not including guest houses or accessory self-contained residential units." (LIP §13.4.1.A; see also (Pub. Res. Code § 30610 & CCR tit. 14, § 13250(a)(1)-(3).) The LIP also provides for exceptions to the above exemptions where there is a risk of adverse environmental impact. (LIP § 13.4.1.B.1-6.)

Petitioners argue that documents demonstrate "the construction or conversion of an [ADU] contained within or directly attached to an existing single-family residence" would generally be exempt as an improvement to a single-family residence. (AR 3553, 3560–61). By contrast, "[g]uest houses and 'self-contained residential units,' i.e. detached residential units" are not exempt (AR 3553, 3560–61). Plaintiff relies on a distinction between detached and attached residential units. Thus, Petitioners largely present an issue of ordinance interpretation. The standard for judicial review of agency interpretation of law is the independent judgment of the court, giving deference to the determination of the agency appropriate to the circumstances of the agency action.

Generally, the interpretation of statutes and ordinances presents a question of law, which is ultimately a judicial function. (MHC Operating Limited Partnership v. City of San Jose (2003) 106 Cal.App.4th 204, 217.) "Even so, the hearing officer's interpretation of the Ordinance is entitled to deference. The courts, in exercising independent judgment, must give appropriate deference to the agency's interpretation." (Id., quotations omitted.) The agency's "interpretation of an ordinance's implementation guidelines is given considerable deference and must be upheld absent evidence the interpretation lacks a reasonable foundation. The burden is on the appellant to prove the board's decision is neither reasonable nor lawful." (Id.)

"An agency interpretation of the meaning and legal effect of a statute is entitled to consideration and respect by the courts; however, ... the binding power of an agency's interpretation of a statute or regulation is contextual: Its power to persuade is both circumstantial and dependent on the presence or absence of factors that support the merit of the interpretation." (Yamaha Corp. of America v. State Bd. of Equalization (1998) 19 Cal.4th 1, 7.) "Courts must, in short, independently judge the text of the statute, taking into account and respecting the agency's interpretation of its meaning, of course, whether embodied in a formal rule or less formal representation. Where the meaning and legal effect of a statute is the issue, an agency's interpretation is one among several tools available to the court. Depending on the context, it may be helpful, enlightening, even convincing. It may sometimes be of little worth." (Id., at 7-8.) "[B]ecause the agency will often be interpreting a statute within its administrative jurisdiction, it may possess special familiarity with satellite legal and regulatory issues. It is this 'expertise,'

expressed as an interpretation ..., that is the source of the presumptive value of the agency's views." (Id. at 11.) That said, because an interpretation is an agency's legal opinion, it commands a commensurably lesser degree of judicial deference. (Id.) For instance, when an agency did not have a longstanding interpretation of a statute and did not adopted a formal regulation interpreting the statute, courts have simply disregarded the opinion offered by the agency. (Interinsurance Exchange of Automobile Club v. Superior Court, (2007) 148 Cal.App.4th 1218, 1235-36; State of California ex rel. Nee v. Unumprovident Corp. (2006) 140 Cal.App.4th 442, 451.) Furthermore, an agency does not have the authority to alter or amend a statute or enlarge or impair its scope. (Morris v. Williams (1967) 67 Cal.2d 733, 748.)

In this case, the proper interpretation of the LIP is a question of law for the Court's independent determination. The Court is certainly not bound by the City's (or Commission's) interpretation. Furthermore, the City's interpretation is not a long-standing opinion on this issue. In fact, the City (and the Commission) has admittedly reversed course with this decision. These circumstances would weigh against finding deference.

Notably, the Riddicks raised certain Coastal Commission guidance confirming their position that an attached ADU is exempt from the CDP requirement, and specifically interpreting the terms "guest house or accessory self-contained unit" as referring only to detached structures. (AR 1111, 1213–14, 1624, 1496, 2163–64, 2306) Petitioners cite evidence that from April 2017 to April 2020, the Coastal Commission issued three guidance memoranda intended to help local governments implement state ADU law in the coastal zone. With specific regard to the CDP exemptions, the memos state that "the construction or conversion of an [ADU] contained within or directly attached to an existing single-family residence" would generally be exempt as an improvement to a single-family residence. (AR 3553, 3560–61.) In opposition, the City argues that it and the Commission "reevaluated its position and found that 'the creation of a selfcontained living unit, in the form of an ADU, is not an 'improvement' to an existing SFR. Rather, it is the creation of a new residence. This is true regardless of whether the new ADU is attached to the existing SFR or is in a detached structure on the same property.'" (AR 3563, 3567.)

The Court concludes that the plain language of the statute fits Petitioners' interpretation far better than the City's interpretation. The LIP clearly creates two categories of exemptions: "[1] all fixtures and structures directly attached to the residence and [2] those structures normally associated with a single family residence, such as garages, swimming pools, fences, storage sheds and landscaping but specifically not including guest houses or accessory self-contained residential units." (LIP §13.4.1.A, emphasis added.) The list of examples, including the exception for guest houses/ADUs, only relates to the second category of unattached structures.

This interpretation is bolstered by the virtually identical provision contained in the Coastal Act, which divided the two categories of exemptions into two separate subdivisions, with the exclusion only applying to the second category. (Cal. Code Regs., Tit. 14, § 13250(a)(1)–(2).) To adopt the City's interpretation would require the Court to ignore the plain language of the LIP, including the fact that "all" "attached" "structures" are exempted. Based on the plain language of the statute, Petitioners' proposed Project would be exempted.

2. Has the City adopted an ordinance governing accessory dwelling units so that Government Code section 65852.2(b) would not apply.

In their papers and at oral argument, Petitioner contended that if the attached ADUs are exempt under 13.14.1 from needing commission approval, then the City has not adopted an ordinance governing ADUs and Government Code section 65852.2(b) would apply. As an initial matter, whether "attached structures" are exempt from the CDP would not change whether the City adopted an ordinance pursuant to section 65852.2(a). The City, however, does not argue that Malibu has adopted such an ordinance, but that the CDP requirement alone prevents the application of section 65852.2. Malibu concedes that "It is only if a CDP is not required that a duty to process an ADU application could apply." (Citing Gov. Code section 65852.2(l) ["Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act"].) Notably, section 65852.2 (a)(3) would also require the same 60-day, non-discretionary, ministerial review. As discussed, the project is for an attached structure to a single-family residence, and thus exempt under the LIP. Since the CDP does not apply, the proper procedure would be a ministerial review.

3. Does Section 13.13.1 requires an administrative CDP (by the planning manager) "always" for a proposed second dwelling unit.

At argument, the parties also discussed the impact of LIP 13.13.1 on the potential requirement for an administrative CDP. The same "deference" standard would apply as to this statutory interpretation. (Yamaha Corp. of America v. State Bd. of Equalization (1998) 19 Cal.4th 1, 7-8.) That said, the Court cannot abdicate its duty to resolve a question of law concerning the proper interpretation of a statute. (Id.)

Here, the Court must determine the section's meaning principally by its plain text, and in context of the entire LIP. Turning to the text, Chapter 13 generally pertains to CDPs. Section 13.3 generally requires people to obtain CDPs for development in the coastal zone. Section 13.4 provides for various exemptions "from the requirement to obtain a Coastal Development Permit", including all structures attached to single-family homes. Section 13.7 provides who may

take action on CPDs, indicating that administrative permits be decided by the Planning Manager. Section 13.13 provides rules on such administrative permits, specifically setting out the "applicability" of ACDPs in section 13.13.1. Section 13.13.1.B provides that "Notwithstanding any other provisions of the LCP, attached or detached second dwelling units shall be processed as administrative permits[.]"

The Court recognizes that taken in context, there are two potential interpretations of this section. The City's offered interpretation is that this section would always require a CDP, specifically an "ACDP" per section 13.13 for proposed second dwelling units. Alternatively, Petitioner's interpretation is that this section merely requires that permits for an ADU be processed as an ACDP, but would not provide an exception from the previously stated exemptions.

Here, the City's interpretation has some textual support, since the section does state that ADUs "shall be processed as" ACDPs. There are, however, flaws with this conclusion. First, it requires the Court to read a contradiction into chapter 13: i) All attached structures are exempt from obtaining a CDP under section 13.4; versus ii) All ADUs, whether attached or not, must obtain a CDP (specifically, an ACDP) under section 13.13. It is difficult to harmonize the conflicting provisions under this construction. The City argues that the "notwithstanding" provision in section 13.13 gives that section priority over the rest of the chapter, and concludes that ADUs are never exempt—no matter the application of section 13.4. This statutory construction, however, would not give full meaning to terms found in section 13.4.1, and in fact, render the exemptions noted there meaningless. Section 13.13.1.B's specific use of the terms "process as" suggests that the section is only referring to which process to apply when dealing with ADUs (i.e., the ACPD process), rather than stating that all ADUs require CDPs in all instances even when exempted.

This interpretation is consistent with the context and content of the other sections of the LIP. Petitioners' interpretation gives meaning to the text of both sections 13.4 and 13.13 without the contradiction present in the City's interpretation. The Court notes that 13.13.1 provides the "Applicability" of "Administrative Permits," which reinforces this interpretation. Further, this interpretation is consistent with section 13.10, which provides for the Planning Manager to "first determine whether the proposed development is:

1. Subject to the requirement for a Coastal Development Permit or permit amendment from the Coastal Commission;
2. Appealable to the Coastal Commission consistent with Chapter 2 of the Malibu LIP (Definitions);
3. Exempt from the Coastal Development Permit requirements as defined in Section 13.4 of the Malibu LIP;

4. Subject to the requirement of securing a Coastal Development Permit to be issued by the City. (Ord. 303 § 3, 2007).

This section only instructs the Planning Manager to determine the exemptions from section 13.4, without mention of ADUs or section 13.13's purported exception to the exemptions. The section otherwise does not imply that there would be an additional and separate analysis for ADUs under section 13.13. The legislative history supports this interpretation. The Coastal Commission described the language in Section 13.13.1.B as "intended to provide an expedited process for the approval of second units that is required pursuant to AB 1866," which was "a procedural change within the coastal zone, i.e., the elimination of local public hearings for residential second units in residential zone districts . . . In this case, all of the policies and provisions of the LCP will still be applied to second unit development, only the permit process will be altered." (Pet. RJN, Ex. A, at p. 26.) In conclusion, the Court agrees with Petitioners' interpretation, as the City's interpretation is unreasonable in light of the above identified issues. Thus, Petitioner's remedy is not an administrative CDP handled by the planning manager.

4. Relief

With respect to relief, Petitioners requested in paragraph 2 of the Prayer for Relief that the Court compel respondents to "ministerially approve" the revised ADU under section 65852.2. However, the court cannot grant the requested relief to compel approval. The Record does not show that the City improperly denied the application on a ministerial basis. Instead, the City indicated would not review the application at all. (AR 3455.) Petitioners only justify that the City must decide the application within 60 days from the date it receives a completed application pursuant to Government Code section 65852.2. The Court does not order the City to grant or approve the application since the only prior determination was that the application required a CDP.

5. RRA

Petitioners also argue that the RRA should have been granted. Petitioners contend that Ms. Sperling has a need for a self-contained unit. To grant the RRA, the City needed to find all the following:

1) The housing…will be occupied by a person with a disability…(2) The approved reasonable accommodation is necessary to make housing available to a person with a disability…(3) The approved reasonable accommodation would not impose an undue financial or administrative burden on the City, (4) approved reasonable accommodation would not require a fundamental

alteration in the nature of the LCP, (5) The approved reasonable accommodation would not adversely impact coastal resources, and (6) The project that is the subject of the approved reasonable accommodation conforms to the applicable provisions of the LCP and the applicable provisions of this section, with the exception of the provision(s) for which the reasonable accommodation is granted.

(LIP §13.30(E).)

Substantial evidence supports the City's finding that not all of the elements were met. Further, unlike the exemption issue above, the Court finds that increased deference for this decision of fact is appropriate. Specifically, the Court agrees that substantial evidence exists in support of the City's finding that the RRA was not necessary to make housing available to Ms. Sperling, that the RRA would require a fundamental alteration in the nature of the LCP, and the project did not otherwise conform to the applicable provisions of the LCP. (See AR 3-5.) For instance, the City reasonably concluded that the expansion of the master bedroom and bath was not necessary to accommodate a disabled individual. Moreover, the City found the RRA not "necessary" because other space in the house could have been converted to provide housing.

6. Housing Accountability Act

The Project is not a "housing development project" within the meaning of the Housing Accountability Act (HAA). A "housing development project" is defined as a use consisting of "residential units only." (Gov. Code §65589.5(h)(2).) No case has interpreted "residential units only" to mean only one unit. Because the term "units" is plural, a development has to consist of more than one unit to qualify. The Department of Housing and Community Development's own guidance provides that a project has to consist of more than one unit to qualify. (RJN Ex. D.)

END OF FINAL RULING

Clerk to give notice.

Certificate of Mailing is attached.

Kiren Mathews

From: Brian T. Hodges
Sent: Wednesday, July 27, 2022 11:06 AM
To: Incoming Lit
Subject: Fw: Riddick V. Malibu: Final Order
Attachments: CA_SUP_LAX_21SMCP00655_d16258749e1269_Minute_Order_MINUTE_ORDER_COURT_ORDER_.pdf

Brian T. Hodges | Senior Attorney
Pacific Legal Foundation
555 Capitol Mall, Suite 1290 | Sacramento, CA 95814
916.288.1393

From: David J. Deerson <DDeerson@pacificlegal.org>
Sent: Wednesday, July 27, 2022 8:26 AM
To: Brian T. Hodges <BHodges@pacificlegal.org>
Subject: Fwd: Riddick V. Malibu: Final Order

Sent from my T-Mobile 4G LTE Device
Get Outlook for Android

From: Jason Riddick <jason_riddick@hotmail.com>
Sent: Wednesday, July 27, 2022 11:05:32 AM
To: David J. Deerson <DDeerson@pacificlegal.org>; Christian Hodges <christian@thousandoakspowersports.com>; Jeremy Talcott <JTalcott@pacificlegal.org>
Cc: elizabethriddick@hotmail.com <elizabethriddick@hotmail.com>
Subject: Riddick V. Malibu: Final Order

Hot off the press- let us discuss

Electronically FILED by Superior Court of California, County of Los Angeles on 11/18/2021 01:54 PM Sherri R. Carter, Executive Officer/Clerk of Court, by M. Mariscal, Deputy Clerk

DAVID J. DEERSON, No. 322947
Email: ddeerson@pacificlegal.org
Pacific Legal Foundation
555 Capitol Mall, Suite 1290
Sacramento, California 95814
Telephone: (916) 419-7111
Facsimile: (916) 419-7747

Attorney for Petitioners

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

WEST JUDICIAL DISTRICT

JASON and ELIZABETH RIDDICK; and RENEE SPERLING,

Petitioners,

v.

CITY OF MALIBU; MALIBU CITY COUNCIL; and MALIBU PLANNING DEPARTMENT,

Respondents.

No. ____________________

VERIFIED PETITION FOR WRIT OF MANDATE (CCP § 1085), AND FOR WRIT OF ADMINISTRATIVE MANDAMUS (CCP § 1094.5), and COMPLAINT FOR DECLARATORY RELIEF (CCP § 1060)

INTRODUCTION

This petition asks the Court to enforce recent amendments to California's housing laws that help reduce the state's severe housing shortage by encouraging the creation of "accessory dwelling units" (commonly known as ADUs, in-law units, granny flats, or "second units") on lots zoned for single-family use. *See*, *generally*, Gov't Code §§ 65852.150 through 65852.22. With limited exception, these amendments protect the property rights of homeowners by requiring local governments to ministerially approve ADU permits, and they forbid local governments from adopting standards that conflict with State law. *See* Gov't Code § 65852.2(a)(3), (e)(1).

Enforcement of State ADU laws are a matter of utmost public importance. As is widely recognized, California faces a severe shortage of lower-cost housing. *See* Gov't Code § 65859.150. Yet year after year, too few homes are built to meet growing housing demands, and regulation makes the cost too high for the average family. This situation is nowhere more dire than in the State's coastal communities like the City of Malibu. Despite having set specific affordable and middle-class housing objectives nearly a decade ago, Malibu has failed to add a single unit of affordable or middle-class housing since at least 2014. *See* City of Malibu (Draft) 2021–2029 Housing Element Appendix A, at A-6 (Aug. 2021) (reporting housing progress for the years 2014–2021). It is estimated that California's housing deficit is projected to grow to 1,800,000 units across the state in the next decade unless more units are built. Manuela Tobias, *Victorious in Recall, Newsom Refocuses on California Housing Crisis*, CalMatters.org (Sept. 20, 2021).[1]

Responding to this crisis, the California Legislature recently declared that ADUs are an "essential component" of the housing supply. Senate Bill 1069 (2016), codified at Gov't Code § 65852.150(a). The Legislature provided several reasons for elevating the status of these small units. Key to this case, the Legislature found that ADUs are inexpensive for homeowners to build, and that they provide much-needed housing for family members, the elderly, and the disabled—among others—at below-market prices within existing neighborhoods. Senate Bill 1069 (2016), codified at Gov't Code § 65852.150(a).

---

[1] *Available at*: https://calmatters.org/housing/2021/09/california-housing-crisis-newsom-signs-bills/.

This case exemplifies the Legislature's hopes. Malibu homeowners Jason and Elizabeth Riddick applied for a permit to add a small ADU for Elizabeth's elderly and disabled mother, Renee Sperling, which would allow her to age with dignity and with easy access to the care she requires. Under the State ADU law, the permit should have issued long ago and Ms. Sperling should have been secure in her home. But the City has resisted the Legislature's will at every step, refusing to comply with the State's streamlined ministerial approval process and refusing to follow California Coastal Commission guidance on the matter. Judicial intervention is therefore necessary to vindicate the Riddicks' property rights to build their ADU and to give effect to an "essential component" of California's housing policy.

PARTIES

Petitioners

1. Petitioners Jason and Elizabeth Riddick (the Riddicks) own residential property in Malibu, California, where they live with their children. In July 2020, they filed an application with the City of Malibu, seeking permission to construct a small accessory dwelling unit (ADU) attached to their residence for the benefit of Elizabeth's mother, Renee Sperling.

2. Petitioner Renee Sperling is an octogenarian who has lived in Southern California her entire life. In recent years, she has seen her health deteriorate. Her movement is hindered by psoriatic arthritis, as well as severe osteoarthritis in her knee and lumbar myelopathy. She is partially blind due to glaucoma. She also suffers from immunodeficiency; due to her weakened immune system, even the common cold can have a devastating effect on her health. As a result of her disabilities, Ms. Sperling needs to live near Elizabeth, who resigned from her full-time job to become Ms. Sperling's primary caretaker. However, due to her immunodeficiency, it is medically necessary that she reside in separate quarters and not be housed together with the rest of the family, including her grandchildren, some of whom were too young to obtain vaccination against COVID-19 until California made the vaccine available to children aged 5-11 on November 3, 2021. *See*

///

///

///

Office of Governor Gavin Newsom, *California Launches Robust Vaccination Program for 5-11 Age Group, Ready to Vaccinate Newly Eligible Californians*, CA.gov (Nov. 3, 2021).[2]

Respondent

3. Respondent City of Malibu is a political subdivision of the state of California located within Los Angeles County. It is the primary permitting authority for all land use developments within its jurisdiction. Under the Coastal Act, Respondent has had the primary permitting authority for all Coastal Development Permits since the California Coastal Commission certified the City's Local Coastal Program in 2002.

4. Respondent Malibu City Council is the governing body of the City. Pursuant to Malibu Muni. Code § 17.04.220, it is the body authorized to adjudicate appeals from decisions of the City's Planning Commission.

5. Respondent Planning Department is an administrative body of the City. Among other things, and along with its Director, Richard Mollica, it is the board tasked with, processing applications for land use and development permits, Malibu Muni. Code § 17.62.030, and for requests for reasonable disability accommodations, Malibu Muni. Code § 17.63.030.

JURISDICTION AND VENUE

6. The Court has jurisdiction of this petition for writ of mandate pursuant to Code of Civil Procedure Section 1085.

7. The Court has jurisdiction of this petition for writ of administrative mandamus pursuant to Code of Civil Procedure Section 1094.6.

8. In an action against a city, venue is proper in the county in which the city is situated. Code of Civ. Proc. § 393(B).

APPLICABLE LAW

State ADU Law

9. To address the state's "severe housing crisis," *see* Senate Bill 1069 (2016), *codified at* Gov't Code § 65852.150(a), the California Legislature established a mandatory statewide

[2] *Available at:* https://www.gov.ca.gov/2021/11/03/california-launches-robust-vaccination-program-for-5-11-age-group-ready-to-vaccinate-newly-eligible-californians/.

framework for owners of existing residential properties to obtain by-right permits to create Accessory Dwelling Units (ADUs). To realize this essential component of the housing supply, the Legislature passed a series of bills in 2016 and again in 2019 aimed at simplifying and streamlining the design requirements and permitting process for ADUs. *See* Senate Bill 13 (2019); Assembly Bill 68 (2019); Assembly Bill 881 (2019); Senate Bill 1069 (2016); Assembly Bill 2299 (2016); Assembly Bill 2406 (2016). These statutes are generally codified at Government Code Sections 65852.150 through 65852.22.

10. Together, these important state laws establish criteria under which permit applications to add an ADU must receive ministerial approval, *see* Gov't Code §§ 65852.2(a)(3), (e)(1), and require local governments either to adopt their own ordinances to achieve this result or else implement the statewide criteria. *Id.* § (a)–(b).

11. As relevant to this matter, these statewide criteria include a maximum floor space of 50% of the existing primary dwelling for attached units, *id.* § (a)(1)(D)(iv), and setback requirements of no more than four feet from the side and rear lot lines, *id.* § (a)(1)(D)(vii).

12. State law also prohibits local governments from imposing any limits on lot coverage that would not permit at least an 800-square-foot ADU with four-foot side and rear yard setbacks. *Id.* § (c)(2)(C). These criteria represent "the maximum standards that local agencies shall use to evaluate a proposed [ADU] on a lot zoned for residential us that contains an existing single-family dwelling." *Id.* § (a)(6).

13. Subdivision (l) of Section 65852.2 provides: "Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 . . . except that the local government shall not be required to hold public hearings for coastal development permit applications for [ADUs]." Thus, the key question raised in the administrative proceedings below was whether the ADU application was subject to the State's ADU law or to Malibu's Local Coastal Program (LCP).

The California Coastal Act and Malibu's Local Coastal Program

14. The California Coastal Act, Pub. Res. Code § 30000, *et seq.*, requires local governments with jurisdiction over Coastal Zone lands to adopt a Local Coastal Program (LCP),

which in turn must be certified by the California Coastal Commission. Pub. Res. Code, § 30500. An LCP typically has two parts: a Land Use Plan (LUP), and a Local Implementation Plan (LIP). The LUP is a general policy document that sets forth policies for coastal development and has the force of law. The LIP is the collection of implementing ordinances that carry out LUP policies. Both the LUP and the LIP—together, the LCP—must be consistent with the Coastal Act.

15. Chapter 7 of the Coastal Act provides that, with certain exceptions, "any person . . . wishing to perform or undertake any development in the coastal zone . . . shall obtain a coastal development permit." Pub. Res. Code § 30600(a).

16. However, Chapter 7 also provides that, "[n]ot withstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for . . . [i]mprovements to existing single-family residences[.]" Pub. Res. Code § 30610(a).

17. Once an LCP for a given area has been certified, "the development review authority provided for in Chapter 7 (commencing with Section 30600) shall no longer be exercised by the commission over any new development proposed within the area to which the certified [LCP] . . . applies and shall at that time be delegated to the local government that is implementing the [LCP] . . . ." Pub. Res. Code § 30519(a).

18. In 2002, the California Coastal Commission certified the City of Malibu Local Coastal Program (LCP). All properties within the City of Malibu, including the Property that is the subject of these petitions, are located within the Coastal Zone, and are therefore subject to the LCP.

19. Reflecting Chapter 7 of the Coastal Act, Malibu's LIP § 13.4.1 provides that "[i]mprovements to existing single-family residences" are "exempt from the requirement to obtain a Coastal Development Permit." This provision was the focus to the parties' dispute below. If the exemption applies to the Riddick's application, then the City was required to issue the permit pursuant to State ADU law.

Administrative Guidance

20. In April 2017, in November 2017, and again in April 2020, the California Coastal Commission, through Executive Director John Ainsworth, issued guidance memoranda intended to help local governments interpret and implement State ADU law in the coastal zone, and to

"harmonize the new ADU requirements with LCP and Coastal Act policies." Each of the memoranda is specifically addressed to Planning Directors of Coastal Cities and Counties. True and correct copies of these guidance documents are attached as EXHIBITS A, B, and C, in chronological order of issuance.

21. The November 2017 memo notes that although the ADU laws do not supersede the Coastal Act, "it would be a mistake for local governments with certified LCPs to interpret this as a signal that they can simply disregard the new law in the coastal zone. The Commission interprets the effect of [subdivision (l)] as preserving the authority of local governments to protect coastal resources when regulating ADUs in the coastal zone, while also complying with the standards in Section 65852.2 to the greatest extent feasible. In other words, ADU applications that are consistent with the standards in Section 65852.2 should be approved administratively, provided they are also consistent with Chapter 3 of the Coastal Act as implemented in the LCP." EXHIBIT B, p. 1.

22. Both the April 2017 and the April 2020 memos instruct planning departments processing ADU applications to check wither a proposed ADU qualifies as exempt from the requirement to obtain a CDP before reviewing it for compliance with local coastal policies. Interpreting Public Resources Code Section 30610(a), and its implementing regulations at California Code of Regulations Title 14, Section 13250, the April 2017 memo explains that "[i]mprovements such as additions to existing single-family dwellings are generally exempt from Coastal Act permitting requirement except when they involve a risk of adverse environmental effects[.]" It also distinguishes between ADUs that are "contained within or directly attached to the existing single-family structure," which qualify for the exemption, and "'[s]elf-contained residential units,' i.e., detached residential units," which do not qualify. EXHIBIT A, p. 3. The April 2020 memo notes to the same effect that "[t]ypically, the construction or conversion of an ADU/JADU contained within or directly attached to an existing single-family residence would qualify as an exempt improvement to a single-family residence." EXHIBIT C, p. 4–5.

/ / /

/ / /

/ / /

FACTUAL ALLEGATIONS

The Riddicks' Application

23. Jason and Elizabeth Riddick (the Riddicks) own residential property at 6255 Paseo Canyon Drive, situated in Malibu, California, where they live with their children.

24. The Riddicks sought realistic and affordable options to house Elizabeth's aging mother, Renee Sperling. Given Ms. Sperling's myriad ailments, she needs to live closer to her family so that Elizabeth could provide her with full-time care. Given Renee's immunodeficiency, and especially in light of the ongoing COVID-19 pandemic, she also requires, as a medical necessity, to live in a space that is separate from the family's main living quarters in order to protect her from ordinary illnesses that could be potentially deadly to her.

25. The Riddicks were thrilled to learn that then-recently adopted California legislation declared ADUs to be an "essential component" of California's housing supply, and that it expressed a legislative intent that owners of single family homes have a right to build an ADU on their property and that local laws not be "so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units" in appropriate zones.

26. Given California state law and policy, and the Riddicks' and Renee's particular needs, the Riddicks determined that an ADU attached to their main residence was the ideal solution for providing Renee safe housing in which she could age in place with the loving care of her family.

27. The Riddicks worked closely with their property's Homeowners' Association (HOA) and with their hired architect to create plans which suited the needs of Renee, the Riddicks, their surrounding neighbors, and the HOA.

28. Because the new ADU would take over some of the existing floor-space from the primary residence, the plans included minor expansions of the primary residence as a compensatory measure—the ADU, as proposed, would intrude on the existing master bath requiring the construction of a new bathroom in the primary structure. In total, this planned compensatory addition to the main residence constituted approximately 44-60 square feet of new floor space. That additional square footage posed no problem to the main structure's total square footage calculation

/ / /

because it could easily be offset by such measures as replacing the awning over the Riddicks' front porch with slatted beams.

29. On or about July 10, 2020, the Riddicks submitted to the City an application to proceed with the plans and construct their attached ADU.

30. Under the Coastal Act and Malibu's LCP, as interpreted by the California Coastal Commission, an attached ADU is exempt from the requirement to obtain a Coastal Development Permit (CDP) because it is an improvement to a single-family residence, and because it is a structure directly attached to the main residence.

31. Nevertheless, the City insisted on processing the application as a non-exempt project requiring a CDP, and titled the application as "CDP 20-034."

32. The application obtained requisite approvals from the Los Angeles County Fire Department, the City Geotechnical staff, and the City Department of Public Works.

33. On October 9, 2020, more than 90 days after their application was submitted, Assistant Planner David Eng sent the Riddicks an email with an attached "letter of project incompleteness" on behalf of the City Planning Department. The email states that the Riddicks' "project is temporarily halted from further review." A true and correct copy of the email is attached as EXHIBIT D. A copy of the "letter of project incompleteness" is attached as EXHIBIT E.

34. According to the email, the most significant issues with the Riddicks' application were "its non-compliance with setbacks and maximum allowed Total Development Square Footage (TDSF) area." Such requirements are precluded by State ADU law, except to the extent they apply by operation of the Coastal Act.

35. The setback and TDSF requirements referred to are codified in Malibu's LCP but do not appear in the Coastal Act—indeed, on information and belief, the TDSF requirement is unique to Malibu. Given the preemptive effect of California state law on ADU development, such requirements are only applicable to a given ADU project if that project is required to obtain a CDP under the Coastal Act or under a certified LCP.

36. The "letter of project incompleteness" states that "[l]ocal jurisdictions are required to comply with state provisions allowing and permitting of accessory dwelling units (ADU)." It

further states: "Government Code section 65852.2 does not supersede currently certified provisions of Local Coastal Programs (LCP). Therefore, until an amendment to the LCP is adopted, the provisions of the LCP will continue to apply to Coastal Development permit applications for ADU's. The subject application for a new attached ADU does not comply with the City's LCP regulations pertaining to setbacks and maximum allowed total development square footage."

37. On December 7, 2020, the Riddicks sent a letter to City officials disputing the contention that the Riddicks' project required a CDP. A true and correct copy of that letter is attached as Exhibit F.

38. In particular, the Riddicks observed that Malibu's LIP at Section 13.4.1 specifically exempts "structures attached directly to the residence" which do not "involve a risk of adverse environmental impact[.]" They further observed that administrative guidance from the Coastal Commission supported this understanding.

39. On February 24, 2021, the City's planning director, Richard Mollica, responded to the Riddicks' December 7, 2020, letter. A true and correct copy of that response is attached as Exhibit G. The letter reiterates the City's position that the Riddicks' project required a CDP, but it did not address the Riddicks' arguments regarding the language of Malibu LIP Section 13.4.1 nor the Coastal Commission guidance.

40. Faced with the City's reluctance to follow Coastal Commission guidance and advance the ADU application under State law, on April 13, 2021, the Riddicks submitted a letter formally requesting a reasonable disability accommodation (RRA) under Malibu LIP Section 13.30. In the same letter, they reiterated their argument, which remained unaddressed by the City, that the project was exempt from the CDP requirement under Malibu's LCP. A true and correct copy of this letter is attached as Exhibit H.

The Planning Commission's Hearing and Adoption of Resolution No. 21-51

41. The Riddicks did not receive any further communication or information from the City regarding their application or RRA until June 4, 2021, just three days before the date set for the Malibu Planning Commissions' hearing on the Riddicks' application. At this time, the Planning

/ / /

Department staff issued its report recommending that the Commission deny both the CDP and the request for accommodation.

42. At its June 7, 2021, meeting, the Planning Commission took staff's recommendation and adopted Resolution No. 21-51 by a 3-2 vote, denying both the CDP and the request for reasonable accommodation.

43. Among other things, the Resolution included official findings that the project "will not adversely impact coastal resources other than by setting a precedent of allowing greater development in the coastal zone," and that "the proposed project, as designed and conditioned, is the least environmentally damaging alternative."

44. Regarding the CDP, the Planning Commission found that that project could not be configured to comply with the LCP's TDSF, setback, and Total Impermeable Lot Coverage (TILC) requirements.

45. Like the TDSF and setback requirements, the TILC requirement is precluded by State ADU law except to the extent that it applies by operation of the Coastal Act.

46. Regarding the Riddicks' argument that their project was exempt from the requirement to obtain a CDP, Assistant City Attorney Trevor Rusin suggested at the hearing that the exemption provision in LIP § 13.4.1 did not apply because by its terms it does not apply to "guest houses or accessory self-contained residential units." In making this argument, Rusin did not acknowledge Coastal Commission guidance concluding that attached ADUs are to be distinguished from "guest houses or accessory self-contained residential units," which are by their nature detached.

47. Regarding the RRA, the Planning Commission accepted staff's determination that the accommodation was not necessary because the Riddicks had "reasonable alternatives" for housing Ms. Sperling, including speculation that the Riddicks could reconfigure existing floor space of their small home to create an ADU for Ms. Sperling without adding any additional square footage. This speculation failed to address the fact that Ms. Sperling's immunodeficiency precludes her from sharing a small home with five other people—one of the primary stated bases supporting the need for a separate, safe living space.

48. The Planning Commission also accepted staff's determination that, despite its conclusion that the Riddicks' proposed ADU would have no adverse impact on Coastal Resources, granting a variance of the TDSF and setback requirements to comply with housing disability law would effect a fundamental alteration in the nature of their LCP, and that granting the RRA could adversely impact coastal resources by setting a precedent for other applicants to assert their rights under housing disability law.

49. Nothing in the record reveals any factual basis for the conclusion that RRAs threaten to fundamentally alter the nature of Malibu's LCP. To the contrary, the record establishes that the Riddicks' request was not only the first ADU application, but was also the first-ever request for an RRA considered by Malibu.

50. Specifically, Assistant Planner David Eng stated: "While we don't believe that the project will impact things like public access or environmental resources, again, the approval of the request . . . would allow for higher amounts of development in this neighborhood, and also set a precedent for pursuing requests for reasonable accommodation to achieve higher levels of development in the city."

51. Furthermore, the Planning Commission accepted staff's determination that the RRA would impose an undue burden on the City because approval of the ADU "would require monitoring by the Planning Director and periodic confirmation that a person with a disability is a resident at that ADU."

52. Nothing in the record reveals any legal basis for this monitoring claim, nor demonstrates what such a monitoring requirement would entail nor what it would cost the City in terms of monetary or labor costs.

53. In any event, the RRA should not have been necessary because the City should have correctly applied State ADU law.

Appeal to the City Council

54. The Riddicks filed a timely appeal of Planning Commission Resolution No. 21-51 to the Malibu City Council.

/ / /

55. The Riddicks again raised their argument that the project was exempt from the requirement to obtain CDP under LIP § 13.4.1.

56. Responding to the City's suggestion—raised for the first time by Assistant City Attorney Trevor Rusin at the Planning Commission hearing—that the project constitutes a "guest house or accessory self-contained residential unit" and therefore does not qualify as exempt, the Riddicks again cited Coastal Commission guidance interpreting those terms to refer exclusively to detached ADUs, and confirming that attached ADUs, like the Riddicks' project, do qualify as exempt.

57. Planning staff issued a report recommending denial of the appeal.

58. On August 19th, the City Council held a public hearing at which it adopted Resolution No. 21-47. A true and correct copy of the resolution is attached as Exhibit I.

59. Among its findings for denying the appeal, Resolution No. 21-47 avers that the "proposal for an attached ADU does not qualify for an exemption from the requirement of a CDP." The Resolution, again, did not address the Coastal Commission memorandum adopting a contrary interpretation of the exemption language.

60. The resolution also states that "The Planning Department, City Public Works Department, and City geotechnical staff have reviewed the project and found that it will not adversely impact coastal resources other than by setting a precedent of allowing greater development in the coastal zone."

61. Despite the resolution's finding that the ADU does not qualify for an exemption from the requirement to obtain a CDP, Councilman Mayor Paul Grisanti and Councilwoman Karen Farrer suggested at the hearing that the true reason for denial concerned not the ADU but the compensatory additions to the primary residence described in Paragraph 28.

62. For example, Mayor Grisanti stated that "if all of the area that's the master bath was designated as part of the ADU, I would find no way to not vote for this. And that's because that is exempt, according to what the legislature says, from our setbacks."

63. Similarly, Councilwoman Farrer stated: "I'll tell you where I have a problem. It's with the primary residence—with the master suite, in that corner. I would really hope that there

would be a way to redesign this plan. The master suite—the bathroom/bedroom—is that back corner that's encroaching into the setback and exceeding TDSF. It's not the ADU."

64. Councilman Uhring and Councilwoman Farrer expressed their reliance on the assumption that the Riddicks had been given opportunities to revise the plans to ensure that the main residence fully complied with TDSF and setbacks.

65. For example, Councilman Steve Uhring stated: "Typically, what the planning commission, before they vote something down, they say 'would you like to go back, make some modifications and bring it back and we'll take a look at it.' I would assume they made the same offer to these folks and they decided not to do that."

66. Councilwoman Farrer stated: "We've heard that there has not been an alternative plan submitted." She further stated: "I really feel like there is an alternative solution that hasn't been explored, and I feel bad that we're not able to get there, but it looks like there was ample opportunity for that and it did not come through, for whatever reason."

67. In fact, no such opportunities to adjust the proposal were presented to the Riddicks, because the entire process was focused on the Planning Department's position, adopted by the Planning Commission, that the ADU itself could not proceed because it was subject to the requirement to obtain a CDP. Therefore, the minor adjustments needed to bring the main residence in line with the LCP—such as replacing the awning over the front porch—would ostensibly have been irrelevant.

Reapplication

68. On September 2, 2021, the Riddicks, acting on the City Council's opinion that they should have been provided an opportunity to modify the proposal, sent an email to City officials requesting that their application be re-opened with slightly modified plans.

69. The new plans were substantially identical with those originally considered by the City. The only difference is that all proposed additional square footage was designated as part of the ADU; no additional square footage would be added to the main residence.

/ / /

/ / /

70. Given Mayor Grisanti's comments described in Paragraph 56, the Riddicks had reason to believe this new application would be supported by the City Council and by planning staff.

71. At a meeting with Planning Director Richard Mollica and Assistant Planning Director Adrien Fernandez on September 23, 2021, Mr. Fernandez indicated that it was "critical that we find out if there is a different way to process this application. However, if it's the same way to process this, then everything we said is still applicable. If it's the same application, it will still go through the planning commission and still face a similar decision."

72. Given the Riddicks' understanding that the ADU was exempt from the requirement to obtain a CDP, and was therefore subject to state law requiring ministerial review for applications to create ADUs, the Riddicks inquired whether the City would provide ministerial review of their application without applying the design standards in the LCP.

73. Mr. Mollica suggested that they meet with City Attorney John Cotti, who could conclusively answer whether ministerial review was available.

74. The Riddicks met with Mr. Cotti on October 6, 2021. Planning Director Mr. Mollica, Assistant City Attorney Mr. Rusin, and counsel for the Riddicks were also present.

75. At the meeting, Mr. Mollica indicated, for the first time, that Malibu planning staff had received communications from the Coastal Commission concerning the administrative guidance on which the Riddicks relied throughout the permitting process. Regarding the guidance that attached ADUs qualify as exempt from the CDP requirement, Mr. Mollica indicated that someone from the Coastal Commission had suggested to City staff that the language was meant to refer only to ADUs created by conversion of existing space, or to Junior ADUs, or to projects less than 500 sq. ft., or to some combination of these categories, but to no other ADU projects.

76. Although the Riddicks raised the Coastal Commission's guidance throughout the permit application process, this was the first time it had ever been suggested to them that a representative or representatives from the Coastal Commission had qualified the language from its published guidance in private communications with the City or its staff.

/ / /

77. In an email on October 8, 2021, the Riddicks through their council requested that Mr. Mollica send them copies of any correspondence between the Coastal Commission and the Planning Department containing any indication to the effect that the language from the administrative guidance was so limited.

78. Mr. Mollica referred the email to Patricia Salazar, an administrative staffer at the Planning Department, and asked her to treat it as a public records request.

79. Ms. Salazar filled the request on October 20, 2021. None of the corresponding documents contained any indication that anyone from the Coastal Commission had ever suggested to the Malibu Planning Department, or to any other entity, that the language in the Coastal Commission's guidance relating to CDP exemptions for attached ADUs should in any way be modified, limited, or otherwise narrowly read.

80. On October 25, 2021, City Attorney John Cotti communicated the City's conclusive determination that the Riddicks' project could not be processed ministerially and that it "is not exempt from the requirement to obtain a coastal development permit."

FIRST CAUSE OF ACTION FOR WRIT OF ADMINISTRATIVE MANDAMUS

—Error of Law

(Code Civ. Proc. § 1094.5; 1094.6)

81. All of the allegations set forth by paragraph 1 through paragraph 67 are realleged and incorporated as if set forth fully herein.

82. Chapter 7 of the Coastal Act provides that, with limited exceptions, "any person . . . wishing to perform or undertake any development in the coastal zone . . . shall obtain a coastal development permit." Pub. Res. Code § 30600(a).

83. However, Chapter 7 also provides that, "[n]otwithstanding any other provision of [the Coastal Act], no coastal development permit shall be required pursuant to this chapter for," *inter alia,* "improvements to existing single-family residences[.]" Pub. Res. Code § 30610(a).

84. Coastal Commission regulations provide that "[f]or purposes of Public Resources Code Section 30610(a) where there is an existing single-family residential building, the following

/ / /

shall be considered a part of that structure: (1) All fixtures and other structures directly attached to a residence[.]"

85. Similarly, Malibu LIP Section 13.14.1 provides that "[i]mprovements to existing single-family residences" are "exempt from the requirement to obtain a Coastal Development Permit." It further provides that "the terms 'Improvements to existing single-family residences' includes all fixtures and structures directly attached to the residence[.]"

86. Administrative guidance from the Coastal Commission explains that ADUs which are directly attached to an existing single-family structure qualify as exempt improvements to single-family dwellings.

87. Because the Riddicks' project is exempt from the requirement to obtain a CDP, state ADU law controls.

88. Because the Riddicks' project is fully consistent with the design standards outlined in State ADU law, the City was legally obligated to ministerially approve the project within 60 days of receiving a completed application.

89. By subjecting the Riddicks' project to the requirement to obtain a CDP, and by not ministerially approving the project according to State ADU law, the City failed to proceed in the manner required by law.

90. The Riddicks are entitled to an order remanding the application to the Planning Commission with direction to review it consistent with State ADU law.

91. Pursuant to Government Code Section 1094.6(c), Respondents shall prepare the complete record of the proceedings culminating with City Council Resolution No. 21-47.

SECOND CAUSE OF ACTION FOR WRIT OF ADMINISTRATIVE MANDAMUS

—Findings not supported by evidence

(Code Civ. Proc., § 1094.5)

92. All of the allegations set forth by paragraph 1 through paragraph 67, as well as the allegations set forth by paragraph 74 through paragraph 79 are realleged and incorporated as if set forth fully herein.

/ / /

93. Even if the Riddicks' attached ADU project were subject to the requirement to obtain a CDP, mandamus is appropriate.

94. Resolution No. 21-47 incorporates by reference the relevant analysis, findings of fact, and conclusions set forth by Malibu planning staff in the attached Council Agenda Report and the Planning Commission Agenda Report, as well as the testimony and materials considered by the Planning Commission and City Council.

95. Statements made by councilmembers at the appeal hearing revealed their erroneous reliance on the assumption that the Riddicks had been provided an opportunity to revise their plans to ensure that the main residence complied with design standards in the LCP. In reality, the Riddicks were never presented such an opportunity because the entire process was focused on staff's determination that, irrespective of the main residence, there was no way for the ADU to be approved as proposed.

96. Statements made by councilmembers at the appeal hearing also revealed their fundamental disagreement with the Resolution's conclusion that the proposed ADU was not exempt from the LCP's TDSF and setback requirements.

97. Resolution No. 21-47 states that "[t]he proposal for an attached ADU does not qualify for an exemption from the requirement of a CDP," and cites Coastal Commission guidance to the effect that "currently certified provisions of LCPs are not superseded by Government Code Section 65852.2 and continue to apply to the requirements of the Certified for ADUs until an LCP amendment is adopted [sic]."

98. For the reasons stated in the First Cause of Action, this finding is not supported by evidence.

99. Although the Riddicks consistently raised the Coastal Commission guidance throughout the application process, they were never given any suggestion that a representative or representatives from the Coastal Commission had qualified the language from its published guidance in private communications with the City until Richard Mollica averred as such at their meeting on October 6, 2021.

/ / /

100. Assuming, without alleging, that Mr. Mollica's statement is true, the Coastal Commission's communication with the City in this regard constitutes evidence that was improperly excluded at the hearing.

101. Resolution No. 21-47 erroneously states that an ADU could be created by converting the existing garage. In reality, the Malibu LCP requires the Riddicks to maintain at least two covered parking spaces on their property at 180 square feet each. LIP § 3.14.3; Malibu General Plan § 7.4.1.

102. Resolution No. 21-47 erroneously states that approving the request for reasonable disability accommodation would "undoubtedly have cumulative impacts on coastal resources as other property owners will undoubtedly seek similar reasonable disability accommodations[.]" In reality, substantial evidence supports the conclusion—reached by the Planning Department, City Public Works Department, and City geotechnical staff—that the project would not adversely impact coastal resources. Concerns about future applicants seeking to vindicate their own rights under local, state, or federal housing law do not transform a project with no adverse impacts on coastal resources into a project that does adversely impact coastal resources.

103. Resolution No. 21-47 erroneously states that the Riddicks presented no reason why Ms. Sperling required separate living quarters and could not safely reside in the existing structure. In reality, the Riddicks provided a note from Ms. Sperling's physician explaining precisely this requirement.

104. Resolution No. 21-47 erroneously finds that approval of the RRA would impose an undue financial or administrative burden on the City. On this point, Assistant Planner David Eng stated at the Planning Commission hearing that the accommodation would impose an undue burden because it "would require monitoring by the Planning Director and periodic confirmation that a person with a disability is a resident at that ADU." In reality, the record contains no factual basis to support this conclusion. No evidence was presented of monetary, time, or labor cost to the City that would result from the supposed "monitoring" requirement. Neither was any legal basis suggested for imposing such a requirement in the first place.

/ / /

105. The Riddicks are entitled to an order invalidating the City Council's adoption of Resolution No. 21-47 and remanding the application to the Planning Commission for review consistent with state ADU law.

106. Pursuant to Government Code Section 1094.6(c), Respondents shall prepare the complete record of the proceedings which culminated in City Council Resolution No. 21-47.

THIRD CAUSE OF ACTION FOR TRADITIONAL WRIT OF MANDATE—Refusal to ministerially approve the revised ADU proposal

(Code Civ. Proc., § 1085)

107. All of the allegations set forth by the preceding paragraphs are realleged and incorporated as if set forth fully herein.

108. The City, and its Planning Department, has conclusively established its position that the revised ADU proposal requires a Coastal Development Permit and cannot be reviewed on a ministerial basis.

109. For the reasons stated in the First Cause of Action, the design standards of the Malibu LCP do not apply to the revised ADU proposal because it is exempt from the requirement to obtain a coastal development permit under the LCP and under the Coastal Act.

110. Under California state law, the City must ministerially consider a permit application to create an ADU.

111. The City of Malibu has not adopted an ordinance in compliance with Government Code Section 65852.2(a). Therefore, when reviewing applications to create ADUs, the City is limited to the design standards set out in Government Code Section 65852.2(a)(1)(D).

112. The Riddicks' revised ADU proposal is fully compliant with the design standards in Government Code Section 65852.2(a)(1)(D) because, among other reasons, it is attached to the primary dwelling; its floor area does not exceed 50% of the floor area of the primary dwelling; and it is set back at least four feet from the side and rear lot lines.

113. The City therefore had a clear, present, and ministerial duty under California law to ministerially review and approve the revised ADU proposal.

/ / /

114. Petitioners have a clear, present, and beneficial right to ministerial review and approval of their revised ADU proposal.

115. The Riddicks are entitled to an order directing the City to accept the revised ADU proposal for ministerial review and to approve the same within the time limit mandated by State law.

FOURTH CAUSE OF ACTION FOR DECLARATORY RELIEF

(Code Civ. Proc., § 1060)

116. All of the allegations set forth by the preceding paragraphs are alleged and incorporated as if set forth fully herein.

117. If the project is not required to obtain a coastal development permit, then the City must ministerially approve the Riddicks' project under California's ADU law.

118. For the reasons outlined in the First Cause of Action, the Riddicks' project is exempt from the requirement to obtain a coastal development permit under both state and local law.

119. There is an actual and justiciable controversy in this case as to whether the Riddicks are required by law to obtain a coastal development permit for their attached ADU. The Riddicks allege that their project is exempt from such a requirement. The City has made a final determination that the project is subject to such a requirement.

120. Thus, a declaratory judgment as to whether the Riddicks' proposal for an attached ADU is exempt from the requirement to obtain a coastal development permit because it is an "improvement to a single-family dwelling," and in particular, is a "structure[] directly attached to the residence," will resolve the controversy among the parties.

FIFTH CAUSE OF ACTION FOR VIOLATION OF THE HOUSING ACCOUNTABILITY ACT

(Gov. Code, § 65589.5)

121. All of the allegations set forth by paragraph 1 through paragraph 67 as well as paragraph 74 through paragraph 79, are alleged and incorporated as if set forth fully herein. In addition, the Riddicks add the following allegations pertaining to their claim for relief under the Housing Accountability Act.

122. The Housing Accountability Act (HAA) provides that when a local agency seeks to disapprove a housing development project that complies with all applicable, objective general plan, zoning, and subdivision standards and criteria, the local agency must base its decision on written findings, supported by a preponderance of the evidence, that the project will have a specific, adverse impact upon the public health or safety, and that this impact cannot feasibly be mitigated by any other means than denial of the project. Gov't Code § 65589.5(j)(1)(A)–(B).

123. Under the HAA, if the local agency considers a proposed housing development to be inconsistent with applicable provisions of law, it must provide written documentation identifying the provisions and explaining the reason why it considers the housing development to be inconsistent therewith. Gov't Code § 65589.5(j)(2)(A).

124. For housing development projects containing fewer than 150 units, such documentation must be provided within 30 days of the date that the application was determined to be complete. Gov't Code § 65589.5(j)(2)(A)(i).

125. If the agency fails to provide this written documentation within the 30-day timeframe, "the housing development project shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision. Gov't Code § 65589.5(j)(2)(B).

126. The Riddicks' proposed ADU qualifies as a "housing development project" under the statute because it consists of a residential unit only. *See* Gov't Code § 65589.5(h)(2)(A).[3]

127. The phrase "determined to be complete" is defined by the HAA as meaning that "the applicant has submitted a complete application pursuant to [Government Code] Section 65943."

[3] Although the HAA's definition of "Housing development project" speaks of "residential units" in the plural, the statute's construction is governed by the General Provisions of the Government Code in which it is housed. Section 13 of the General Provisions explains that "the singular number includes the plural, and the plural the singular." While the Housing Accountability Act has historically been applied to proposals for more than one residential unit, no controlling authorities have specifically addressed whether the definition of "housing development project" includes a single unit. This issue is currently being considered by the First District Court of Appeal. *See Reznitsky v. Marin County*, No. A161813 (Cal. App. 1 Dist.).

128. Section 65943 is part of the Permit Streamlining Act. Gov't Code § 65920, *et seq.* It provides that an agency must make a written determination of completeness or noncompleteness within 30 calendar days after receiving an application for a development project. Gov't Code § 65943(a). If such written determination is not made within 30 days, and the application includes a statement that it is an application for a development permit, the application shall be "deemed complete."

129. Although Petitioners maintain that their project is exempt from the requirement to obtain a coastal development permit, it was nevertheless processed as an application for a coastal development permit by the Planning Department, the Planning Commission, and the City Council.

130. Therefore, the Permit Streamlining Act required the government to provide a written determination of completeness or noncompleteness within 30 days of receiving the application.

131. The Riddicks' application was submitted on July 10, 2020. The Planning Department did not make a written determination of incompleteness until October 9, 2020, far exceeding the 30-day time limit in Government Code Section 65943(a).

132. Therefore, the application was "deemed complete" under Government Code Section 65943(a) on August 10, 2020, the 31st day after the application was submitted.

133. As a result, the application was "determined to be complete" for purposes of the HAA on August 10, 2020.

134. If the City considered the application to be inconsistent with applicable objective provisions of law, it was required by the HAA to provide a written documentation explaining its position by September 9, 2020, 30 days after the application was determined to be complete under the HAA.

135. The City did not provide any documentation relating to the project's inconsistency with applicable provisions of law until October 9, 2020, far exceeding the 30-day time limit in Government Code Section 65589.5(j)(2)(A)(i).

136. Therefore, under the HAA, the project "shall be deemed consistent, compliant, and in conformity" with applicable provisions of law. Gov't Code § 65589.5(j)(2)(B).

/ / /

137. Where a housing project is so compliant, local agencies may not disapprove the project without making the requisite findings mandated by Government Code Section 65589.5(j)(1)(A)–(B).

138. The City made none of these requisite findings.

139. The City's denial of the Riddicks' ADU without the requisite written findings therefore constitutes a violation of the Housing Accountability Act.

140. Moreover, although the Riddicks consistently raised the Coastal Commission guidance throughout the application process, they were never given any suggestion that a representative or representatives from the Coastal Commission had qualified the language from its published guidance in private communications with the City until Richard Mollica averred as such at their meeting on October 6, 2021.

141. Assuming, without alleging, that Mr. Mollica's statement is true, the Coastal Commission's communication with the City in this regard constitutes evidence that was improperly excluded at the hearing for the reasons stated in the Second Cause of Action.

142. However, if Mr. Mollica's statement was not true, then the statement was frivolous and without merit.

143. Therefore, if the statement was not true, then an order directing Respondents to approve the Riddicks' project is appropriate under Government Code Section 65589.5(k)(1)(A)(ii).

144. Petitioners Jason and Elizabeth Riddick are the applicants for the subject housing development project.

145. Petitioner Renee Sperling is a person who would be eligible to apply for residency in the subject housing development project.

146. All Petitioners are therefore appropriate parties to bring this action to enforce the provisions of the Housing Accountability Act. *See* Gov't Code § 65589.5(k)(1)(A)(i).

147. Petitioners are therefore entitled to an order directing Respondents to comply with the Housing Accountability Act.

148. Petitioners also request an order directing Respondents to approve the housing development project.

149. Petitioners are entitled to reasonable attorneys' fees and costs of suit under Government Code Section 65589.5(k)(1)(B).

150. Pursuant to Government Code Section 65589.5(m), Respondents shall prepare and certify the record of proceedings in accordance with Code of Civil Procedure Section 1094.6(c) within 30 days after service of this petition, and shall bear the costs of preparation.

PRAYER FOR RELIEF

WHEREFORE, Petitioners request relief as follows:

1. A writ of administrative mandamus commanding the Respondents to invalidate, set aside, and not enforce Resolution No. 21-47, in whole or in part, as described above;

2. A writ of traditional mandate compelling Respondents to ministerially approve the Riddicks' revised ADU application as required under Government Code Section 65852.2.

3. A declaration pursuant to Code of Civil Procedure Section 1060 that:

a. Attached ADUs are exempt from the requirement to obtain a Coastal Development Permit under state and local law; and that

b. Attached ADUs must be ministerially reviewed pursuant to Government Code Section 65852.2.

4. An order commanding that Respondents comply with Government Code Section 65589.5 within 60 days.

5. An order commanding that Respondents approve the Riddicks' housing development project pursuant to Government Code Section 65589.5(k)(1)(A)(ii).

6. For costs of suit, including reasonable attorney fees pursuant to Government Code Section 65589.5(k)(ii), Code of Civil Procedure Section 1021.5, and/or any other basis in law or equity; and for such other and further relief as the Court may deem proper.

DATED: November 18, 2021.

Respectfully submitted,

DAVID J. DEERSON
Pacific Legal Foundation

By /s/ David J.Deerson
DAVID J. DEERSON

Attorney for Petitioners

VERIFICATION

I, Elizabeth Riddick, declare:

I have read the foregoing VERFIED PETITION FOR WRIT OF MANDATE (CCP §§ 1085, 1094.5) & COMPLAINT FOR DECLARATORY RELIEF (CCP § 1060) and, except for matters stated on information and belief, the facts stated therein are true on my own knowledge, and as to those matters stated on information and belief, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed on this 16 day of November, 2021, at Malibu, California.

ELIZABETH RIDDICK

EXHIBIT A

CALIFORNIA COASTAL COMMISSION
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105- 2219
VOICE (415) 904- 5200
FAX (415) 904- 5400
TDD (415) 597-5885

TO: Planning Directors of Coastal Cities and Counties

FROM: John Ainsworth, Executive Director

RE: New Accessory Dwelling Unit Legislation

DATE: April 18, 2017

New State requirements regarding local government regulation of "accessory dwelling units" (ADUs) became effective on January 1, 2017. The Legislature amended Government Code section 65852.2 to modify the requirements that local governments may apply to ADUs, most notably with respect to parking. The Legislature further specified that local ADU ordinances enacted prior to 2017 that do not meet the requirements of the new legislation are null and void. (Gov. Code, § 65852.2, subd. (a)(4).) Significantly, however, the Legislature further directed that the statute shall not be interpreted to "supersede or in any way alter or lessen the effect or application of the California Coastal Act . . . except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units." (Gov. Code, § 65852.2, subd. (j).) The Legislature also enacted Government Code section 65852.22, which establishes streamlined review of "junior" ADUs in jurisdictions that adopt ordinances that meet certain specified criteria. Unlike Government Code section 65852.2, the junior ADU statute does not specifically address or refer to the Coastal Act.

The Coastal Act requires the Coastal Commission to encourage housing opportunities for low and moderate income households and calls for the concentration of development in existing developed areas. (Pub. Resources Code, §§ 30250, subd. (a); 30604, subd. (f).) The creation of new ADUs in existing residential areas is a promising strategy for increasing the supply of lower-cost housing in the coastal zone in a way that avoids significant adverse impacts on coastal resources.

Some local governments have requested guidance from the Coastal Commission regarding how to implement the ADU and junior ADU statutes in light of Coastal Act requirements. This memorandum is intended to provide general guidance for local governments with fully certified local coastal programs (LCPs). The Coastal Commission is generally responsible for Coastal Act review of ADUs in areas that are not subject to fully certified LCPs. Local governments that have questions about specific circumstances not addressed in this memorandum should contact the appropriate district office of the Coastal Commission.

1) Update Local Coastal Programs

The Coastal Commission strongly recommends that local governments amend their LCPs to address the review of coastal development permit (CDP) applications for ADUs in light of the new

legislation. Currently certified provisions of LCPs, including specific LCP ADU sections currently in place, are not superseded by Government Code section 65852.2 and continue to apply to CDP applications for ADUs. Any conflicts between those LCP provisions and the new statutory requirements as they apply to *local permits other than CDPs*, however, may cause confusion that unnecessarily thwarts the Legislature's goal of encouraging ADUs. Government Code section 65852.2 expressly allows local governments to adopt local ordinances that include criteria and standards to address a wide variety of concerns, including potential impacts to coastal resources, and thus the coastal resource context applicable to any particular local government jurisdictional area needs to be addressed in any proposed LCP ADU sections. Coastal Commission staff anticipates that LCP amendments to implement the ADU legislation will reconcile Coastal Act requirements with the ADU statutes, thus allowing accomplishment of the Legislature's goals both with respect to coastal protection and encouragement of ADUs.

When evaluating what specific changes to make to an LCP, consider whether amendments to the land use plan component of the LCP are necessary in order to allow proposed changes to the implementation plan component. LCP amendments that involve purely procedural changes, that do not propose changes in land use, and/or that would have no impact on coastal resources may be eligible for streamlined review as minor or de minimis amendments. (Pub. Resources Code, § 30514, subd. (d); Cal. Code Regs., § 13554.)

2) Review of ADU Applications

A) **Check CDP History for the Site.** The ADU statutes apply to residentially zoned lots that currently have a legally established single-family dwelling. Determine whether a CDP was previously issued for development of the lot and whether that CDP limits, or requires a CDP or CDP amendment for, changes to the approved development or for future development or uses of the site. In such cases, previous CDP requirements must be understood in relation to the proposed ADU, and they may restrict the proposal. If an ADU application raises questions regarding a Coastal Commission CDP, including if an amendment to a CDP issued by the Coastal Commission may be necessary, instruct the applicant to contact the appropriate district office of the Coastal Commission.

B) **Determine Whether the Proposed ADU Qualifies As Development.** The Coastal Act's permitting requirements apply to development performed or undertaken in the coastal zone. (Pub. Resources Code, § 30600, subd. (a).) Minor changes to an existing legally established residential structure that do not involve the removal or replacement of major structural components (e.g., roofs, exterior walls, foundations) and that do not change the size or the intensity of use of the structure do not qualify as development with the meaning of the Coastal Act. A junior ADU that complies with the requirements of an ordinance enacted pursuant to Government Code section 65852.22 generally will not constitute development because it will not change the building envelope and because it must contain at least one bedroom that was previously part of the primary residence. Such minor changes do not require a Coastal Act approval such as a CDP or waiver unless specified in a previously issued CDP for existing development on the lot. If questions arise regarding whether a

proposed ADU qualifies as development, please contact the appropriate district office of the Coastal Commission.

C) **If the Proposed ADU Qualifies As Development, Determine Whether It Is Exempt.** Improvements such as additions to existing single-family dwellings are generally exempt from Coastal Act permitting requirements except when they involve a risk of adverse environmental effects as specified in the Coastal Commission's regulations. (Pub. Resources Code, § 30610, subd. (a); Cal. Code Regs., tit. 14, § 13250.) Improvements that qualify as exempt development under the Coastal Act and its implementing regulations do not require Coastal Act approval unless required pursuant to a previously issued CDP. (Cal. Code Regs., tit. 14, § 13250, subd. (b)(6).)

An improvement does not qualify as an exempt improvement if the improvement or the existing dwelling is located on a beach, in a wetland, seaward of the mean high tide line, in an environmentally sensitive habitat area, in an area designated as highly scenic in a certified land use plan, or within 50 feet of the edge of a coastal bluff. Improvements that involve significant alteration of land forms as specified in section 13250 of the Commission's regulations also are not exempt. In addition, the expansion or construction of water wells or septic systems are not exempt. Finally, improvements to structures located between the first public road and the sea or within 300 feet of a beach or the mean high tide line are not exempt if they either increase the interior floor area by 10 percent or more or increase the height by more than 10 percent. (Cal. Code Regs., tit. 14, § 13250, subd. (b).)

To qualify as an exempt improvement to a single-family dwelling, an ADU must be contained within or directly attached to the existing single-family structure. "[S]elf-contained residential units," i.e., detached residential units, do not qualify as part of a single-family residential structure and construction of or improvements to them are therefore not exempt development. (Cal. Code Regs., tit. 14, § 13250, subd. (a)(2).) Again, if questions arise regarding CDP exemption requirements, please contact the appropriate district office of the Coastal Commission.

D) **If the Proposed ADU Is Not Exempt From CDP Requirements, Determine Whether A CDP Waiver is Appropriate.** If a proposed ADU qualifies as an improvement to a single-family dwelling but is not exempt, a local government may waive the requirement for a CDP if the LCP includes a waiver provision and the proposed ADU meets the criteria for a CDP waiver. Such provisions generally allow a waiver if the local government finds that the impact of the ADU on coastal resources or coastal access would be insignificant. (*See* Cal. Code Regs., tit. 14, § 13250, subd. (c).) In addition, they generally allow a waiver if the proposed ADU is a detached structure and the local government determines that the ADU involves no potential for any adverse effect on coastal resources and that it will be consistent with the Chapter 3 policies of the Coastal Act. (*See* Pub. Resources Code, § 30624.7.) Some LCPs do not provide for waivers, but may allow similar expedited approval procedures. Those other expedited approval procedures may apply. If an LCP does not include provisions

regarding CDP waivers or other similar expedited approvals, the local government may submit an LCP amendment to authorize those procedures.

E) **If a Waiver Would Not Be Appropriate, Review CDP Application for Consistency With Certified LCP Requirements.** If a proposed ADU constitutes development, is not exempt, and is not subject to a waiver or similar expedited Coastal Act approval authorized in the certified LCP, it requires a CDP. The CDP must be consistent with the requirements of the certified LCP and, where applicable, the public access and recreation policies of the Coastal Act, except that no local public hearing is required. (Gov. Code, § 65852.2, subd. (j).) Provide the required public notice for any CDP applications for ADUs, and process the CDP application according to LCP requirements. Once a final decision on the CDP application has been taken, send the required final local action notice to the appropriate district office of the Coastal Commission. (Cal. Code Regs., tit. 14, §§ 13565-13573.) If the ADU qualifies as appealable development, a local government action to approve a CDP for the ADU may be appealed to the Coastal Commission. (Pub. Resources Code, § 30603.)

EXHIBIT B

CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105- 2219
VOICE (415) 904- 5200
FAX (415) 904- 5400
TDD (415) 597-5885

TO: Planning Directors of Coastal Cities and Counties

FROM: John Ainsworth, Executive Director

RE: Implementation of New Accessory Dwelling Unit Law

DATE: November 20, 2017

On April 18, 2017, we circulated a memo intended to help local governments interpret and implement new state requirements regarding regulation of "accessory dwelling units" (ADUs) in the coastal zone. Following the enactment of AB 2299 (Bloom) and SB 1069 (Wiekowski), changes to Government Code 65852.2 now impose specific requirements on how local governments can and cannot regulate ADUs, with the goal of increasing statewide availability of smaller, more affordable housing units. Our earlier memo was intended to help coastal jurisdictions and members of the public understand how to harmonize the new ADU requirements with LCP and Coastal Act policies. This memo is meant to provide further clarification and reduce confusion about whether and how to amend LCPs in response to these changes.

Although Government Code Section 65852.2(j) states that it does not supersede or lessen the application of the Coastal Act, it would be a mistake for local governments with certified LCPs to interpret this as a signal that they can simply disregard the new law in the coastal zone. The Commission interprets the effect of subdivision (j) as preserving the authority of local governments to protect coastal resources when regulating ADUs in the coastal zone, while also complying with the standards in Section 65852.2 to the greatest extent feasible. In other words, ADU applications that are consistent with the standards in Section 65852.2 should be approved administratively, provided they are also consistent with Chapter 3 of the Coastal Act as implemented in the LCP. Where LCP policies and ordinances are already flexible enough to implement the provisions of Section 65852.2 directly, local governments should do so. Where LCP policies directly conflict with the new provisions or require refinement, those LCPs should be updated to be consistent with the new ADU statute to the greatest extent feasible while still complying with Coastal Act requirements.

Bear in mind that Section 65852.2 still preserves a meaningful level of local control by authorizing local governments to craft policies that address local realities. It allows local governments to designate areas where ADUs are allowed based on criteria such as the adequacy of public services and public safety considerations. It also explicitly allows local governments to adopt ordinances that impose certain standards, including but not limited to standards regarding height, setbacks, lot coverage, zoning density, and maximum floor area. In the coastal zone, local governments can incorporate such standards in LCP policies in order to protect Chapter 3 resources while still streamlining approval of ADUs.

Therefore, the Commission reiterates its previous recommendation that local governments amend their LCPs accordingly, using Section 65852.2 as a blueprint for crafting objective

standards related to design, floor area, parking requirements and processing procedures for ADUs in a manner that protects wetlands, sensitive habitat, public access, scenic views of the coast, productive agricultural soils, and the safety of new ADUs and their occupants. Depending on the individual LCP, such amendments might include:

- Updating the definition of an ADU (variously referred to in existing LCPs as second units, granny units, etc.)
- Implementing an administrative review process for ADUs that includes sufficient safeguards for coastal resources
- Re-evaluating the minimum and maximum ADU floor area and related design standards
- Specifying that ADUs shall not be required to install new or separate utility connections
- For ADUs contained within existing residences or accessory structures, eliminating local connection fees or capacity charges for utilities, water and sewer services.
- Providing for ministerial approval of Junior Accessory Dwelling Units (JADUs)
- Clarifying that no more than one additional parking space per bedroom is required
- Eliminating off-street parking requirements for ADUs located within a ½ mile of public transit, an architecturally significant historic district, an existing primary residence or accessory structure, one block of a car share vehicle, or where on-street parking permits are required but not offered to the occupant of an ADU

This is just a partial list, as specific changes will depend on existing LCP policies as well as unique local resource constraints. See our earlier memo for additional recommendations.

We are currently conducting a survey to identify the number of local governments which have already initiated the amendment process. For those that have not, Commission staff strongly urges those jurisdictions to do so in the very near future.

To expedite the process, the Commission will process ADU-specific LCPAs as minor or de minimis amendments whenever possible. We realize that procedural requirements for public review and participation can be time consuming, and will strive to complete the Commission's review process expeditiously. In the interim, we urge local governments to consider which provisions of Section 65852.2 might be implemented administratively, through existing procedures, definitions, or variances. Because each LCP is distinct and unique to its particular jurisdiction, some are inherently more flexible than others. We strongly suggest applying any existing discretion in a manner that conforms to Section 65852.2 as well as your LCP.

We acknowledge that because of the nature of our state/local partnership the Commission cannot compel local governments to undertake these amendments. The foregoing advice is offered in the spirit of our mutual goals and responsibilities of preserving both Coastal Act objectives and local control of planning and permitting decisions. We are grateful that the Legislature elected to preserve the integrity of the Coastal Act when it passed these bills. We are also mindful that this did not reflect any intent to discourage ADUs in the coastal zone, but rather to ensure that new ADU incentives are implemented in a way that does not harm coastal resources. In order to maintain the Legislature's continued support for this approach, and avoid the imposition of unilateral coastal standards for ADUs in the future, it is essential to demonstrate that these housing policies can and will be responsibly implemented in the coastal zone.

My staff and I remain ready and available to assist in this effort.

EXHIBIT C

STATE OF CALIFORNIA - NATURAL RESOURCES AGENCY GAVIN NEWSOM, GOVERNOR

CALIFORNIA COASTAL COMMISSION
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400

To: Planning Directors of Coastal Cities and Counties

From: John Ainsworth, Executive Director

Re: Implementation of New ADU Laws

Date: April 21, 2020

The Coastal Commission has previously circulated two memos to help local governments understand how to carry out their Coastal Act obligations while also implementing state requirements regarding the regulation of accessory dwelling units ("ADUs") and junior accessory dwelling units ("JADUs"). As of January 1, 2020, AB 68, AB 587, AB 670, AB 881, and SB 13 each changed requirements on how local governments can and cannot regulate ADUs and JADUs, with the goal of increasing statewide availability of smaller, more affordable housing units. This memo is meant to describe the changes that went into effect on January 1, 2020, and to provide guidance on how to harmonize these new requirements with Local Coastal Program ("LCP") and Coastal Act policies.

Coastal Commission Authority Over Housing in the Coastal Zone

The Coastal Act does not exempt local governments from complying with state and federal law "with respect to providing low- and moderate-income housing, replacement housing, relocation benefits, or any other obligation related to housing imposed by existing law or any other law hereafter enacted." (Pub. Res. Code § 30007.) The Coastal Act requires the Coastal Commission to encourage housing opportunities for low- and moderate-income households. (Pub. Res. Code § 30604(f).) New residential development must be "located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it" or in other areas where development will not have significant adverse effects on coastal resources. (Pub. Res. Code § 30250.) The creation of new ADUs in existing residential areas is a promising strategy for increasing the supply of lower-cost housing in the coastal zone in a way that may be able to avoid significant adverse impacts on coastal resources.

This memorandum is intended to provide general guidance for local governments with fully certified LCPs. The Coastal Commission is generally responsible for Coastal Act review of ADUs in areas that are not subject to fully certified LCPs. Local governments that have questions about specific circumstances not addressed in this memorandum should contact the appropriate district office of the Commission.

Overview of New Legislation[1]

The new legislation effective January 1, 2020 updates existing Government Code Sections 65852.2 and 65852.22 concerning local government procedures for review and approval of ADUs and JADUs. As before, local governments have the discretion to adopt an ADU ordinance that is consistent with state requirements. (Gov. Code § 65852.2(a).) AB 881 (Bloom) made numerous significant changes to Government Code section 65852.2. In their ADU ordinances, local governments may still include specific requirements addressing issues such as design guidelines and protection of historic structures. However, per the recent state law changes, a local ordinance may not require a minimum lot size, owner occupancy of an ADU, fire sprinklers if such sprinklers are not required in the primary dwelling, or replacement offstreet parking for carports or garages demolished to construct ADUs. In addition, a local government may not establish a maximum size for an ADU of less than 850 square feet, or 1,000 square feet if the ADU contains more than one bedroom. (Gov. Code § 65852.2(c)(2)(B).) Section 65852.2(a) lists additional mandates for local governments that choose to adopt an ADU ordinance, all of which set the "maximum standards that local agencies shall use to evaluate a proposed [ADU] on a lot that includes a proposed or existing single-family dwelling." (Gov. Code § 65852.2(a)(6).)

Some local governments have already adopted ADU ordinances. Existing or new ADU ordinances that do *not* meet the requirements of the new legislation are null and void, and will be substituted with the provisions of Section 65852.2(a) until the government comes into compliance with a new ordinance. (Gov. Code § 65852.2(a)(4).) However, as described below, existing ADU provisions contained in certified LCPs are not superseded by Government Code section 65852.2 and continue to apply to CDP applications for ADUs until an LCP amendment is adopted. One major change to Section 65852.2 is that the California Department of Housing and Community Development ("HCD") now has an oversight and approval role to ensure that local ADU ordinances are consistent with state law, similar to the Commission's review of LCPs. If a local government adopts an ordinance that HCD deems to be non-compliant with state law, HCD can notify the Office of the Attorney General. (Gov. Code § 65852.2(h).)

If a local government does *not* adopt an ADU ordinance, state requirements will apply directly. (Gov. Code § 65852.2(b)–(e).) Section 65852.2 subdivisions (b) and (c) require that local agencies shall ministerially approve or disapprove applications for permits to create ADUs. Subdivision (e) requires ministerial approval, whether or not a local government has adopted an ADU ordinance, of applications for building permits of the following types of ADUs and JADUs in residential or mixed use zones:

- One ADU or JADU per lot *within* a proposed or existing single-family dwelling or existing space of a single-family dwelling or accessory structure, including an expansion of up to 150 square feet beyond the existing dimensions of an existing accessory structure; with exterior access from the proposed or existing single-family

[1] This Guidance Memo only provides a partial overview of new legislation related to ADUs. The Coastal Commission does not interpret or implement these new laws.

dwelling; side and rear setbacks sufficient for fire and safety; and, if a JADU, applicant must comply with requirements of Section 65852.22; (§ 65852.2(e)(1)(A)(i)-(iv))
- One detached, new construction ADU, which may be combined with a JADU, so long as the ADU does not exceed four-foot side and rear yard setbacks for the single family residential lot; (§ 65852.2(e)(1)(B))
- Multiple ADUs within the portions of existing multifamily dwelling structures that are not currently used as dwelling spaces; (§ 65852.2(e)(1)(C))
- No more than two detached ADUs on a lot that has an existing multifamily dwelling, subject to a 16-foot height limitation and four-foot rear yard and side setbacks. (§ 65852.2(e)(1)(D))

ADUs and JADUs created pursuant to Subdivision (e) must be rented for terms greater than 30 days. (Gov. Code § 65852.2(e)(4).)

What Should Local Governments in the Coastal Zone Do?

1) Update Local Coastal Programs (LCPs)

Local governments are required to comply with both these new requirements for ADUs/JADUs and the Coastal Act. Currently certified provisions of LCPs are not, however, superseded by Government Code section 65852.2, and continue to apply to CDP applications for ADUs until an LCP amendment is adopted. Where LCP policies directly conflict with the new provisions or require refinement to be consistent with the new laws, those LCPs should be updated to be consistent with the new ADU provisions to the greatest extent feasible, while still complying with Coastal Act requirements.

As noted above, Section 65852.2 expressly allows local governments to adopt local ordinances that include criteria and standards to address a wide variety of concerns, including potential impacts to coastal resources. For example, a local government may address reductions in parking requirements that would have a direct impact on public access. As a result, we encourage local governments to identify the coastal resource context applicable in a local jurisdiction and ensure that any proposed ADU-related LCP amendment appropriately addresses protection of coastal resources consistent with the Coastal Act at the same time that it facilitates ADUs/JADUs consistent with the new ADU provisions. For example, LCPs should ensure that new ADUs are not constructed in locations where they would require the construction of shoreline protective devices, in environmentally sensitive habitat areas, wetlands, or in areas where the ADU's structural stability may be compromised by bluff erosion, flooding, or wave uprush over their lifetime. Our staff is available to assist in the efforts to amend LCPs.

Please note that LCP amendments that involve purely procedural changes, that do not propose changes in land use, and/or that would have no impacts on coastal resources may be eligible for streamlined review as minor or de minimis amendments. (Pub. Res. Code § 30514(d); Cal. Code Regs., tit. 14, § 13554.) The Commission will process ADU-specific LCP amendments as minor or de minimis amendments whenever possible.

2) Follow This Basic Guide When Reviewing ADU or JADU Applications

a. Check Prior CDP History for the Site.

Determine whether a CDP was previously issued for development of the lot and whether that CDP limits, or requires a CDP or CDP amendment for, changes to the approved development or for future development or uses of the site. The applicant should contact the appropriate Coastal Commission district office if a Commission-issued CDP limits the applicant's ability to apply for an ADU or JADU.

b. Determine Whether the Proposed ADU or JADU Qualifies as Development.

Any person "wishing to perform or undertake any development in the coastal zone" shall obtain a CDP. (Pub. Res. Code § 30600.) Development as defined in the Coastal Act includes not only "the placement or erection of any solid material or structure" on land, but also "change in the density or intensity of use of land[.]" (Pub. Res. Code § 30106.) Government Code section 65852.2 states that an ADU that conforms to subdivision (a) "shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot." (Gov. Code § 65852.2(a)(8).)

Conversion of an existing legally established room(s) to create a JADU or ADU within an existing residence, without removal or replacement of major structural components (i.e. roofs, exterior walls, foundations, etc.) and that do not change the size or the intensity of use of the structure may not qualify as development within the meaning of the Coastal Act, or may qualify as development that is either exempt from coastal permit requirements and/or eligible for streamlined processing (Pub. Res. Code §§30106 and 30610), see also below. JADUs created within existing primary dwelling structures that comply with Government Code Sections 65852.2(e) and 65852.22 typically will fall into one of these categories, unless specified otherwise in a previously issued CDP or other coastal authorization for existing development on the lot. However, the conversion of detached structures associated with a primary residence to an ADU or JADU may involve a change in the size or intensity of use that would qualify as development under the Coastal Act and require a coastal development permit, unless determined to be exempt or appropriate for waiver.

c. If the Proposed ADU Qualifies as Development, Determine Whether It Is Exempt.

Improvements such as additions to existing single-family dwellings are generally exempt from Coastal Act permitting requirements except when they involve a risk of adverse environmental effects as specified in the Commission's regulations. (Pub. Res. Code § 30610(a); Cal. Code Regs., tit. 14, § 13250.) Improvements that qualify as exempt development under the Coastal Act and its implementing regulations do not require a CDP from the Commission or a local government unless required pursuant to a previously issued CDP. (Cal. Code Regs., tit. 14, § 13250(b)(6).)

Typically, the construction or conversion of an ADU/JADU contained within or directly attached to an existing single-family residence would qualify as an exempt improvement to a single-family residence. (Cal. Code Regs., tit. 14, § 13250(a)(1).) Guest houses and "self-contained residential units," i.e. detached residential units, do not qualify as part of a single-family residential structure, and construction of or improvements to them are therefore not exempt development. (Cal. Code Regs., tit. 14, § 13250(a)(2).)

d. If the Proposed ADU is Not Exempt from CDP Requirements, Determine Whether a CDP Waiver Is Appropriate.

If the LCP includes a waiver provision, and the proposed ADU or JADU meets the criteria for a CDP waiver the local government may waive the permit requirement for the proposed ADU or JADU. The Commission generally has allowed a waiver for proposed *detached* ADUs if the executive director determines that the proposed ADU is de minimis development, involving no potential for any adverse effects on coastal resources and is consistent with Chapter 3 policies. (*See* Pub. Res. Code § 30624.7.)

Some LCPs do not allow for waivers, but may allow similar expedited approval procedures. Those other expedited approval procedures may apply. If an LCP does not include provisions regarding CDP waivers or other similar expedited approvals, the local government may submit an LCP amendment to authorize those procedures.

e. If a Waiver Would Not Be Appropriate, Review CDP Application for Consistency with Certified LCP Requirements.

If a proposed ADU constitutes development, is not exempt, and is not subject to a waiver or similar expedited Coastal Act approval authorized in the certified LCP, it requires a CDP. The CDP must be consistent with the requirements of the certified LCP and, where applicable, the public access and recreation policies of the Coastal Act. The local government then must provide the required public notice for any CDP applications for ADUs and process the application pursuant to LCP requirements, but should process it within the time limits contained in the ADU law if feasible. Once the local government has issued a decision, it must send the required final local action notice to the appropriate district office of the Commission. If the ADU qualifies as appealable development, a local government action to approve a CDP for the ADU may be appealed to the Coastal Commission. (Pub. Res. Code § 30603.)

Information on AB 68, AB 587, AB 670, and SB 13

JADUs – AB 68 (Ting)

JADUs are units of 500 square feet or less, contained entirely within a single-family residence or existing accessory structure. (Gov. Code §§ 65852.2(e)(1)(A)(i) and 65852.22(h)(1).) AB 68 (Ting) made several changes to Government Code section 65852.22, most notably regarding the creation of JADUs pursuant to a local government ordinance. Where a local

government has adopted a JADU ordinance, "[t]he ordinance may require a permit to be obtained for the creation of a [JADU]." (Gov. Code § 65852.22(a).) If a local government adopts a JADU ordinance, a maximum of one JADU shall be allowed on a lot zoned for single-family residences, whether they be proposed or existing single-family residences. (Gov. Code § 65852.22(a)(1).) (This formerly only applied to *existing* single-family residences. Now, proposals for a new single-family residence can include a JADU.) Efficiency kitchens are no longer required to have sinks, but still must include a cooking facility with a food preparation counter and storage cabinets of reasonable size relative to the space. (Gov. Code § 65852.22(a)(6).) Applications for permits pursuant to Section 65852.22 shall be considered ministerially, within 60 days, if there is an existing single-family residence on the lot. (Gov. Code § 65852.22(c).) (Formerly, complete applications were to be acted upon within 120 days.)

If a local government has *not* adopted a JADU ordinance pursuant to Section 65852.22, the local government is required to ministerially approve building permit applications for JADUs within a residential or mixed-use zone pursuant to Section 65852.2(e)(1)(A). (Gov. Code § 65852.22(g).) That section is detailed in bullet points on pages two-three of this memorandum and refers to specific ADU and JADU approval scenarios.

Sale or Conveyance of ADUs Separately from Primary Residence – AB 587 (Friedman)

AB 587 (Friedman) added Section 65852.26 to the Government Code to allow a local government to, by ordinance, allow the conveyance or sale of an ADU separately from a primary residence if several specific conditions all apply. (Gov. Code § 65852.26.) This section only applies to a property built or developed by a qualified nonprofit corporation, which holds enforceable deed restrictions related to affordability and resale to qualified low-income buyers, and holds the property pursuant to a recorded tenancy in common agreement. Please review Government Code Section 65852.26 if such conditions apply.

Covenants and Deed Restrictions Null and Void – AB 670 (Friedman)

AB 670 added Section 4751 to the California Civil Code, making void and unenforceable any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a planned development, and any provision of a governing document, that either effectively prohibits or unreasonably restricts the construction or use of an ADU or JADU on a lot zoned for single-family residential use that meets the requirements of Section 65852.2 or 65852.22 of the Government Code.

Delayed Enforcement of Notice to Correct a Violation – SB 13 (Wieckowski)

SB 13 (Wieckowski) Section 3 added Section 17980.12 to the Health and Safety Code. The owner of an ADU who receives a notice to correct a violation can request a delay in enforcement, if the ADU was built before January 1, 2020, or if the ADU was built after January 1, 2020, but the jurisdiction did not have a compliant ordinance at the time the request to fix the violation was made. (Health & Saf. Code § 17980.12.) The owner can request a delay of five (5) years on the basis that correcting the violation is not necessary to protect health and safety. (Health & Saf. Code § 17980.12(a)(2).)

EXHIBIT D

From:	David Eng
To:	Elizabeth Riddick
Cc:	Bonnie Blue; Richard Mollica
Subject:	6255 Paseo Canyon Drive (ACDP 20-034): Incomplete Letter
Date:	Friday, October 9, 2020 8:41:51 PM
Attachments:	6255 Paseo Canyon Dr - CDP 20-034 - Incomplete 20201009.pdf PLN Grading Verification Certificate.pdf PLN Setback Zoning Code Interpretation.pdf PLN TDSF Impermeable Coverage.pdf LCP MMC Story Pole Policy.pdf PLN Revised Plans Submittal Memo.pdf PLN Mailing Labels Radius Map Providers.pdf

---

Hello Elizabeth,

Please find attached the Planning Department's letter of project incompleteness for your proposed project at 6255 Paseo Canyon Drive (ACDP 20-034). Unfortunately, your project is temporarily halted from further review.

In addition to the plan corrections and comments I have listed in the attached letter, the project's more significant issues are its non-compliance with setbacks and maximum allowed Total Development Square Footage (TDSF) area. The State requires local jurisdictions such as the City of Malibu to comply with recent legislation allowing the review and permitting of accessory dwelling units as part of a ministerial process. However, per the California Coastal Commission, Government Code Section 65852.2 does not supersede currently certified provisions of local coastal programs (LCP). The entire City of Malibu is within the Coastal Zone and subject to the provisions of its LCP. Until the California Coastal Commission approves an amendment to the City of Malibu LCP, ADU proposals must comply with development standards, including setbacks and development square footage, specified in the LCP.

To proceed with your application, you must either revise the proposal to comply with the development standards in the LCP or apply for variances to setbacks and square footage. Planning staff does not support approval of variances for this project.

If you have further questions regarding the City's application of its LCP to this project, I am happy to coordinate a call between you, me, and my Planning Director, Bonnie Blue (copied on this e-mail).

Best,

David

David Eng | Assistant Planner | City of Malibu
23825 Stuart Ranch Road, Malibu, CA 90265
Phone: 310.456.2489 ext. 372
Fax: 310.456.7650
Email: deng@malibucity.org

EXHIBIT E

City of Malibu

23825 Stuart Ranch Road · Malibu, California · 90265-4861
Phone (310) 456-2489 · Fax (310) 456-3356 · www.malibucity.org

October 9, 2020

Elizabeth and Jason Riddick
6255 Paseo Canyon Drive
Malibu, CA 90265

Reference: 6255 Paseo Canyon Drive
Coastal Development Permit (CDP) No. 20-034
New attached accessory dwelling unit and minor addition to existing single-family dwelling.

Dear Mr. and Mrs. Riddick,

On **July 10, 2020,** the application listed above was submitted to the City of Malibu's Planning Department for processing. The proposal is for a new 414 square foot attached accessory dwelling unit, 157 square foot addition, and 43 square foot expansion of a covered porch. The subject property is located at 6255 Paseo Canyon Drive (APN 4469-033-013) and is zoned Single Family- Medium (SF-L). The subject property is within the Non-Appealable Jurisdiction of the California Coastal Commission (CCC) as depicted on the Post Local Coastal Program Certification Permit and Appeal Jurisdiction Map of the City of Malibu.

Planning Department Staff has completed an initial review of the application and determined on **October 9, 2020** that the application submitted was **INCOMPLETE and will require further information to be processed as an Administrative Coastal Development Permit.** To continue processing the application, please address the following items.

Advisory on Accessory Dwelling Units in the Coastal Zone

1. Local jurisdictions are required to comply with state provisions allowing and permitting of accessory dwelling units (ADU). However, per the California Coastal Commission, Government Code section 65852.2 does not supersede currently certified provisions of Local Coastal Programs (LCP). Therefore, until an amendment to the LCP is adopted, the provisions of the LCP will continue to apply to Coastal Development permit applications for ADU's. The subject application for a new attached ADU does not comply with the City's LCP regulations pertaining to setbacks and maximum allowed total development square footage. Additional information on these issues is provided further in this letter.

Discretionary Requests

2. This proposal for a new attached ADU requires and includes an application for an Administrative Coastal Development Permit. As proposed, the project also requires applications for variances for side and rear yard setbacks, and for exceeding the maximum allowed total development square footage. While applications for ADU's are reviewed ministerially, requests for discretionary approvals such as variances require a public hearing by the City's Planning Commission. Please note that it is Planning staff's opinion that the Planning Commission is unlikely to grant the variances and does not support their approval.

Documentation

3. Total Grading Yardage Verification Certificate. Please find, complete, and return the enclosed Total Grading Yardage Verification Certificate for all the grading or excavation the foundation of the proposed addition will necessitate. Please attach all calculations utilized to estimate the cubic yardages indicated. Should the proposed grading exceed 99 cubic yards, the form and the required calculations must be prepared by a State of California Licensed Civil Engineer. The form and the calculations shall be stamped and wet signed by the preparing party.

4. Demolition Permit. The project includes the partial demolition of the existing single-family residence to accommodate the remodel and addition. Please submit a form of payment in the amount of $348.00 for the demolition permit.

5. Mailing List and Radius Map. Please submit a 500 foot radius map and a certified list of corresponding property owners and occupants within the 500 foot radius of the subject property. Property owner and applicant addresses on mailing labels will not be accepted. Mailing addresses and radius maps shall be submitted in digital format. Please refer to the enclosed list of mailing label providers for the required format.

Plan Revisions

Please make the following revisions. When complete, submit the Revised Plans Memorandum form to staff for review, the form is available at the public counter or on the City of Malibu Planning Department webpage under forms. Additionally, please submit one electronic set of 24” x 36” plans.

<u>Cover Sheet</u>

6. Scope of Work: In addition to the new accessory dwelling unit, please note the minor addition to the existing residence and porch.

7. Setbacks: The project does not comply with the required setbacks. Based on the estimated lot depth of 116 feet and lot width of 95 feet, the parcel has the following approximate required setbacks:

   a. Front: 23’ - 2”
   b. Side (minimum): 9’- 6”
   c. Side (cumulative): 23’ -9”
   d. Rear 17’ – 5”

   As proposed, the additions have a 5’ minimum side yard setback, a 13’ cumulative side setback, and 14’ – 9” rear setback, which do not comply with the required setbacks. Please revise the proposal to comply with the setbacks.

   Please depict the required setbacks and setback calculations on the site plan. Refer to the enclosed Zoning Code Interpretation No. 3 Determining Setbacks for further direction.

8. Total Development Square Footage (TDSF): The proposed total of 3,614 square feet exceeds the maximum allowed TDSF of 3,085 for the parcel. Although any new or converted square footage for the ADU that is within the existing footprint of the dwelling (eg. ADU bathroom) may be exempted, the ADU area within the expanded footprint will cause the dwelling to exceed its TDSF.

Include the total development square footage (TDSF) calculation on the cover sheet. Provide a breakdown of the existing, demolished and proposed TDSF. Refer to the enclosed TDSF calculation sheet for further direction.

9. Provide a breakdown of the impermeable coverage; include the existing, demolished, new and the total proposed. Impermeable coverage is anything that water cannot "permeate" through. This includes, but is not limited to, building footprints, driveways, walkways, patios, decks surrounding pools, etc. Swimming pools and spas are not counted in impermeable coverage calculations. Refer to the enclosed impermeable coverage calculation sheet for further direction.

10. Provide the total number of existing and proposed enclosed and unenclosed parking spaces. Please note the minimum size allowed is 10 feet wide by 18 feet deep.

Site Plan

11. Please submit an impermeable coverage exhibit, i.e. a site plan that identifies the square footage of the impermeable areas and a corresponding list of the existing and proposed impermeable coverage.

12. Depict the pool equipment and screening materials on the site plan.

13. Show the location, height, and material of all existing and proposed fences, site walls, and hedges.

Demolition Plans

14. Provide the linear footage adjacent to the exterior walls, doors and substantial windows proposed to be demolished. Provide a table with the calculation of the percentage of exterior walls to be demolished that corresponds to the exterior wall diagram. Please provide a separate calculation for each structure. This information will help staff evaluate the percentages of exterior renovation proposed.

    a. Please note the portion of exterior walls where the structural components are removed or structurally strengthen to extend the life of the building are considered demolished, (i.e., the wall is demolished if the top plate is removed or if new beams "sister in" old beams).

    b. If a new exterior wall is proposed to accommodate the addition which results in the conversion of an existing exterior wall into an interior wall, please include that linear feet of the interior wall as a wall demolished in the calculation.

Elevations

15. Provide elevation plans that illustrate the existing condition of the structure from all directions. Currently, only a proposed condition is shown. If existing and proposed elevations are provided on the same plan sheet, please clearly differentiate between existing development and proposed development.

16. Provide plans that illustrate the existing condition of the structure from all directions.

17. The south elevation depicts a new attic window. Please clarify whether this is a decorative feature, or if there is any development within the attic space.

Outstanding Agency Approvals

18. Approval from the Los Angeles County Fire Department Fire Prevention Engineer. Please contact the Los Angeles County Fire Department Fire Prevention Engineer at (818) 880-0341 for submittal requirements and review status.

Further Processing

19. Please note the certified mailing labels and radius map shall expire 6 months subsequent to the certification date. In order to ensure adequate public notification, the submitted notification labels for property owners and occupants may need to be updated prior to public hearing notices. Staff will coordinate with the applicant about this as necessary in the future.

20. Please note that a story pole plan will be required if variances for setbacks are pursued. Staff will coordinate with the applicant about this if variances are pursued. Please refer to the attached Story Pole Policy for more information.

21. Staff will prepare a Notice of Application for a CDP application sign for the proposed project. When ready, the sign will be made available for pickup at the Planning Counter. The applicant shall post the sign on a visually prominent onsite location. After posting the sign, the applicant is responsible for filling out and returning a Notice Posting Affidavit, including onsite photographs of the posted sign.

Additional comments may be forthcoming upon receipt of revised plans and/or new information. Please be aware that additional fees and requirements may be required in the near future should it be determined that additional discretionary review or studies are required.

Please provide written response to the Planning Department within 45 days of the date of this letter, otherwise staff may close the subject application due to inactivity. The subject application and a portion of the fees will be mailed back to you. Should this application be closed, yet you wish to proceed with the subject project, then you will be required to resubmit a new application and filing fees.

If you have any questions, please contact me at (310) 456-2489, extension 372 or at deng@malibucity.org

Sincerely,

David Eng
Assistant Planner

Enclosed

- Grading Verification Certificate
- Setback and Zoning Code Interpretation Handout
- TDSF and Impermeable Coverage Calculation Sheet
- Mailing Data and Radius Map Certification
- Revised Plan Submittal Form

EXHIBIT F

Jason and Elizabeth Riddick
6255 Paseo Canyon Drive
Malibu, California 90265
Telephone: (310) 633-4490
Jason_Riddick@hotmail.com
ElizabethRiddick@hotmail.com

December 7, 2020

Via E-Mail Only

Mr. Trevor L. Rusin, Esq.
Assistant City Attorney
310-220-2177
trevor.rusin@bbklaw.com

Mr. Richard Mollica, AICP
Acting Planning Director
City of Malibu
310-456-2489 Ext. 346
Rmollica@malibucity.org

Re: Proposed Attached Accessory Dwelling Unit At 6255 Paseo Canyon

Gentlemen,

This letter follows our Zoom meeting held on November 25, 2020 in which the four of us discussed the proposed Accessory Dwelling Unit ("ADU") proposed to be attached to our existing single family residence at 6255 Paseo Canyon Drive, Malibu, CA 90265 (the "Project"), approval of which is currently pending with the City of Malibu ("City"). During the Zoom, it was noted by Mr. Rusin that if our Project is determined by the City to fall within the exemptions enumerated by Section 13.4.1(A) ("Section 13.4.1(A)") of the City's certified Local Coastal Program adopted September 13, 2002 (the "LCP"), it would not require a Coastal Development Permit ("CDP"). If our Project does not require a CDP, it is subject only to ministerial processing by the City under the recently enacted statewide ADU laws, whereby the City is required by law to approve our Project once City staff determines that applicable state-wide ADU requirements are met.

For the reasons set forth below, the Project should be approved immediately because it both (i) meets the state-wide ADU requirements and (ii) is exempt from the LCP's requirement for a CDP under the plain language of Section 13.4.1(A) of Malibu's LCP. Indeed, controlling provisions of the California Coastal Act and Title 14 of the Code of Regulations that are virtually identical to the LCP show that attached ADUs with no potential for adverse environment impacts are exempt from the requirement to obtain a CDP. Finally, this point is made explicit in the April 21, 2020 Memorandum Re Implementation of New ADU Laws from Coastal Commission Executive Director John Ainsworth. (*See* LCP, § 13.4.1(A); Cal. Code Regs., tit. 14, § 13250(a)(1); Cal. Pub. Resources Code § 30610; April 21, 2020 Coastal Commission Memorandum Re Implementation of New ADU Laws.)

I. <u>The Project Conforms to California's New ADU Laws</u>

As a threshold matter, our Project qualifies as an Accessory Dwelling Unit under the recently revised California Government Code Section 65852.2 ("Section 65852.2"). Under Section 65852.2, as of January 1, 2020, all local governments in California must allow at least an

800 square foot accessory dwelling unit to be constructed that is at least 16 feet in height with 4-foot side and rear yard setbacks, provided all other ADU statutory requirements are satisfied. City imposed limits on lot coverage, floor area ratio (i.e., "TDSF"), open space, and minimum lot size restrictions may not be used if they prohibit the construction of an accessory dwelling unit that meets the state-wide specifications. The fact that our Project falls well inside these parameters is evident from our plans on file with the City. Thus, the only remaining question to be determined is whether the Project is exempt from the requirement to obtain a CDP under the LCP.

II. Our Project Is Exempt from The Requirement to Obtain a CDP

Our Project is exempt from the requirement to obtain a CDP under the LCP because it falls within the CDP exemptions set forth under Section 13.4.1(A). Specifically, our Project seeks to build a "structure[] attached directly to the residence" as stated in Section 13.4.1(A) of the Malibu LCP that does not "involve a risk of adverse environmental impact" under Section 13.4.1(B)(1)-(3). The Project proposes a small (less than 500 sqft) ADU attached directly to our home in our enclosed backyard. Our home is situated inside the long-established residential neighborhood of Malibu West. There is no question that the Project does not "involve a risk of adverse environmental impact" because none of the enumerated categories of environmentally sensitive impacts are implicated by the Project. (*See* LCP, Section 13.4.1(B)(1)-(3).) Specifically, our residence is not located "on a beach, in a wetland, seaward of the mean high tide line, in an environmentally sensitive habitat area, or within 50 feet of the edge of a coastal bluff" nor does it require "the construction of water wells or septic systems." (*Id.*)

III. The Limitation On CDP Exemptions For "Guest Houses or Accessory Self-Contained Residential Units" Contained in Section 13.4.1(A) Are Not Applicable To The Project

The City has raised a question as to whether the language within Section 13.4.1(A) concerning certain "guest houses or accessory self-contained residential units" would somehow remove attached ADU from the category of exempt "structures attached to directly to the residence" for exemption purposes. The answer is no. The requirement within Section 13.4.1(A) that certain "guest houses or self-contained residential units" obtain a CDP only applies to limit the following otherwise CDP exempt category of development in the immediately preceding clause, which is irrelevant to our Project: "structures normally associated with a single family residence, such as garages, swimming pools, fences, storage sheds and landscaping." Instead, attached ADUs fall into a separate and distinct CDP exception for "structures attached directly to the residence" under Section 13.4.1(A)

The LCP cannot be read to conflate an exempt attached ADU with a non-exempt "guest house or self-contained residential unit" for two primary reasons: (1) the plain language of Section 13.4.1(A) of Malibu's LCP and the virtually identically worded and controlling provisions of the California Coastal Act and Title 14 of the Code of Regulations from which its verbiage is derived support the view that attached ADUs are CDP exempt "structures attached directly to the residence" and (2) the April 21, 2020 Memorandum Re Implementation of New

ADU Laws by Coastal Commission Executive Director John Ainsworth confirms in no uncertain terms that attached ADUs are "structures attached directly to the residence" for purposes of making exemption determinations.

A. The California Costal Action, Title 14 of the California Code of Regulations, and a Plain Reading of the LCP Strongly Show That Attached ADUs Are Exempt "Structures Attached Directly To the Residence"

<u>First</u>, a plain reading of the controlling provisions of the Coastal Act codified in Public Resources Code § 30610, as interpreted through implementing regulations set forth in the California Code of Regulations, Title 14, Section 13250(a)(2), show that exempt "structures attached to a primary residence," i.e., an attached ADU, are not limited by the exclusion applicable to "Guest Houses or Self-Contained Residential Units" in a different subsection of the regulations.

Public Resources Code § 30610(a) states in relevant part:

> "[N]o coastal development permit shall be required pursuant to this chapter for . . . Improvements to existing single–family residences; provided, however, that the commission shall specify, by regulation, those classes of development which involve a risk of adverse environmental effect and shall require that a coastal development permit be obtained pursuant to this chapter…"

The Coast Commission, through California Code of Regulations, in turn, expounds upon the meaning of Public Resources Code § 30610(a):

> (a) For purposes of Public Resources Code Section 30610(a) where there is an existing single-family residential building, the following shall be considered a part of that structure:
> (1) **<u>All fixtures and other structures directly attached to a residence</u>**.
> (2) Structures on the property normally associated with a single-family residence, such as garages, swimming pools, fences, and storage sheds; **<u>but not including guest houses or self-contained residential units</u>**; and
> (3) Landscaping on the lot.

(Cal. Code Regs., tit. 14, § 13250(a)(1)) (emphasis added.)

The above statutory provisions, from which the language in Malibu's LCP originated, make it clear that the exemption to the requirement to obtain a coastal development permit "for fixtures and other structures directly attached to a residence", such as an attached ADU, as described in Section 13250(a)(1) ***<u>is not modified</u>*** by the exclusion for "guest houses or self-contained residential units," because the later is contained in the entirely separate subsection 13250(a)(2). Moreover, the qualifying language "but not including guest houses or self-

contained residential units" must be read in its usual and ordinary sense, which is to modify only the phrase that immediately proceeds it and which is contained in the same section, which, again, is only "structures on the property normally associated with a single-family residence, such as garages, swimming pools, fences, and storage sheds," **not attached ADUs**. Furthermore, to construe the qualifications imposed inside Section 13250(a)(2) to also delimit exempt structures attached to a residence in Section 13250(a)(1) would violate the last antecedent rule, which is a core principle of statutory construction. "A longstanding rule of statutory construction--the 'last antecedent rule'--provides that 'qualifying words, phrases and clauses are to be applied to the words or phrases immediately preceding and are not to be construed as extending to or including others more remote." (*Garcetti v. Superior Court* (2000) 85 Cal.App.4th 1113, 1120) *quoting White v. County of Sacramento* (1982) 31 Cal. 3d 676, 680) (holding that qualifying language in a subsection only applied to that subsection, not a proceeding and separate subsection). Finally, it also would not make logical sense to interpret the last words of subpart (a)(2) as qualifying anything other than the preceding portions of subpart (a)(2), since both guest houses and self-contained residential units are commonly thought of as detached, rather than attached, structures (unlike an attached ADU).[1]

Malibu may not interpret its certified LCP in a manner that departs from how the exemption exclusion for guest houses or self-contained residential is applied within the California Coastal Act and Title 14 of the California Code of Regulations. First, to apply a strained interpretation to the LCP that is inconsistent with the Coastal Act to block our Project would violate the expressed purpose and intent of the LCP, which is to ensure that the "process for review of all development with the coastal zone of the City of Malibu….**will be consistent with** . . . the California Coastal Act and the California Code of Regulations Title 14 Division 5.5." (LCP, § 13.1.) (emphasis added). Second, the LCP is subject and subservient to the Coastal Act and California Code of Regulations. All public agencies, including the City, must comply with the requirements of the Coastal Act, and are subject to the jurisdiction of the Coastal Commission when acting within the coastal zone. (Public Resources Code § 30003.)[2]

B. The April 21, 2020 Memorandum Re Implementation of New ADU Laws by Coastal Commission Executive Director John Ainsworth Directly Supports the Interpretation Of LCP Section 13.4.1(A) Urged Herein

Second, if you harbor any lingering doubt as to whether attached ADUs should be considered part of the class of exempt structures attached directly to a residence, it should be dispelled by the April 21, 2020 Memorandum Re Implementation of New ADU Laws by Coastal Commission Executive Director John Ainsworth (the "Memo"), a copy of which is attached to

---

[1] Nor would an attached ADU fit the definition of a guest house or a self-contained residential unit in any event. "Houses" are commonly defined as having four free standing wall, but an attached ADU does not. Likewise, an attached ADU is not "self-contained residential unit" since it partially relies on a shared wall with the home for containment and is by definition not "self-contained."

[2] "Public agency" is not defined within the definitions section of Coast Act 30100-30122 but it is commonly understood to include cities. (*See e.g*., Cal. Gov. Code. 6252(d).)

this letter as Exhibit A. The Memo provides guidance to Malibu and all other coastal cities on how to evaluate whether a proposed attached ADU is exempt from the CDP requirements of an LCP under the Coastal Act. The Memo confirms that attached ADUs are exempt from the requirement to obtain a CDP under language virtually identical to Section 13.4.1(A) of Malibu's LCP, and that the exclusion for guest houses and self-contained residential units refer only to "detached residential units" and therefore **do not** apply to attached ADUs. The Memo states, in relevant part:

> **[T]he construction** or conversion o**f an ADU**/JADU contained within or **directly attached to an existing single-family residence would qualify as an exempt improvement to a single-family residence. (Cal. Code Regs., tit. 14, § 13250(a)(1).)** Guest houses and "self-contained residential units," i.e. detached residential units, do not qualify as part of a single-family residential structure, and construction of or improvements to them are therefore not exempt development. (Cal. Code Regs., tit. 14, § 13250(a)(2).)

(Ex. A at p. 5 [emphasis added].)

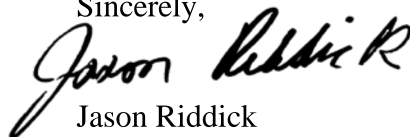
Following the guidance to you from Mr. Ainsworth, our proposed ADU is "directly attached to an existing single-family residence" and therefore should "qualify as an exempt improvement to a single-family residence. (Cal. Code Regs., tit. 14, § 13250(a)(1).)" as opposed to "Guest houses and "self-contained residential units," i.e. detached residential units, [that] do not qualify as part of a single-family residential structure, and . . . are therefore not exempt development. (Cal. Code Regs., tit. 14, § 13250(a)(2).)." (Ex. A [Memo at p.5].)

IV. Conclusion

We respectfully ask that you confirm that the City of Malibu will process our Project on an administrative basis as a CDP-exempt attached ADU improvement pursuant to Cal. Code Regs., tit. 14, § 13250(a)(1) and LCP Section 13.4.1(A). If you decline to do so, please state the detailed basis of your decision in writing, so that we may evaluate our legal remedies moving forward.

Thank you both for your ongoing time and attention to this matter, and we wish you Happy Holidays and a joyous New Year.

Sincerely,



Jason Riddick

EXHIBIT G

Exhibit C

City of Malibu

23825 Stuart Ranch Road · Malibu, California · 90265-4861
Phone (310) 456-2489 · Fax (310) 456-7650 · www.malibucity.org

February 24, 2021

Jason and Elizabeth Riddick
6255 Paseo Canyon Drive
Malibu, CA 90265

Re: Coastal Development Permit (CDP 20-034)
Proposed Accessory Dwelling Unit and minor addition to existing single-family dwelling at 6255 Paseo Canyon Drive.

Dear Mr. and Mrs. Riddick:

The City is in receipt of your December 7, 2020 letter regarding your application for an attached Accessory Dwelling Unit (ADU) at your property at 6255 Paseo Canyon Drive. After careful consideration, we disagree with your conclusion. Your proposed ADU would violate the Total Development Square Footage (TDSF) limit and required setbacks in the City's certified Local Coastal Program (LCP), and neither the state ADU law nor the City's ADU ordinance changes that.

Coastal Act requirements *do* apply to your proposed ADU.

Except for a no-public-hearing requirement, the state ADU law has no bearing on how the City approves or regulates a proposed ADU under the California Coastal Act. As plainly stated in the ADU law itself, "Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act …, except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units."

Yes, it's true that the City has a ministerial-approval process for ADUs that comply with the state ADU law and the City's ADU ordinance — but that is separate from, and really irrelevant to, how the City approves and regulates ADUs *under the Coastal Act*.

The proposed ADU fails to comply with setback and TDSF standards in the certified LCP.

There is no provision in the existing, certified Malibu LCP that allows your ADU project as proposed to go forward in violation of the setback and TDSF standards in the City's certified LCP. As explained above, compliance with the state ADU law is irrelevant to whether your proposed ADU requires a CDP or is exempt from a CDP. Again, "Nothing in this section [the ADU law] shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act …."

The Local Implementation Plan (part of the City's existing, certified LCP) includes setback and TDSF standards. These standards apply to your property, and your proposed ADU does not comply with them.

- The LIP imposes a side-yard setback of 10 feet. The proposed ADU would encroach into the required setback area by five feet.
- The LIP requires a rear-yard setback of 17 feet, 3 inches. The proposed ADU would encroach into the required setback area by two feet.
- The LIP limits Total Development Square Footage based on the formula set forth in MMC 17.40.040(A)(13) and LIP 3.6(K). The proposed ADU would exceed the allowable square footage.

The City is bound by its certified LCP to ensure compliance with these standards. The ADU law does not change that.

Coastal Commission Guidance re ADUs does not change these requirements.

Yes, the Coastal Commission has issued guidance about how a City may deem certain types of ADU projects to be "not development" or eligible for a waiver from CDP requirements, but that guidance does not automatically rewrite the city's certified LCP. Nor does it preempt the LCP's setback and TDSF requirements. Nothing in the LCP relieves you or the city of the obligation to ensure compliance with the standards in the certified LCP.

No variance is justified here.

Under the LCP, there is one way for you to develop the ADU as you propose: You would have to get a variance from each standard. Based on the materials submitted, the City cannot make these findings and so cannot approve a variance from any of the standards that your ADU would violate.

You have other ADU options.

The non-compliant ADU that you have proposed is not your only option to create an ADU on your property. You may convert some of the existing space in the primary dwelling to create a junior ADU or ADU. You may also change your attached-ADU design to comply with the LCP's setback, TDSF, and other standards. Either would require a Coastal Development Permit because the existing LCP does not exempt any accessory dwelling unit.

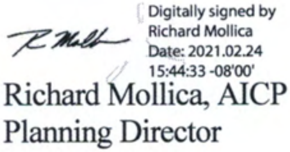
The LCP is likely to change in the future to allow some exemptions from CDP requirements for ADUs that comply with certain standards, but that has not happened yet and we cannot pretend that it has.

To reiterate, we are aware of HCD's guidance suggesting that a City may amend its LCP to make a new-construction, attached ADU eligible for a waiver from CDP requirements, but HCD's guidance does not rewrite the City's LCP or otherwise preempt the requirements of the existing, certified LCP. The law requires the City to actually amend its LCP, in accordance with a specific public process. Until the City completes the legal process to amend the LCP, the existing CDP requirement for second units or ADUs remains in effect. The City has no legal authority to ignore that requirement of the City's certified LCP.

We are confident that the law does not compel otherwise, and that the City has no legal authority to do what you're asking.

You have options to move forward. We invite you to adjust your plans and submit an approvable alternative for review.

Sincerely,



Richard Mollica, AICP
Planning Director

Cc: Planning File

EXHIBIT H

Jason and Elizabeth Riddick
6255 Paseo Canyon Drive
Malibu, California 90265
Telephone: (310) 633-4490
Jason_Riddick@hotmail.com
ElizabethRiddick@hotmail.com

April 13, 2021

Via E-Mail Only

Mr. Richard Mollica, AICP
Planning Director
City of Malibu
310-456-2489 Ext. 346
Rmollica@malibucity.org

Re: Proposed Attached Accessory Dwelling Unit At 6255 Paseo Canyon
REQUEST FOR REASONABLE ACCOMODATION UNDER ADA

Dear Richard,

As you know, we (the "Riddick Family") own 6255 Paseo Canyon Drive, Malibu CA, 90265 ("Property"). In June of 2020, we applied with the City of Malibu ("City" or "Malibu") for a permit to build an attached accessory dwelling unit and minor addition to our existing single-family dwelling, totaling 571 square feet (the "Project"). At the time of our application, we informed you and our City assigned planner, David Eng, of our purpose for the Project, which is to provide housing for Elizabeth's 82-year-old mother, Renee Sperling, who has multiple disabilities.

Introduction

The purpose of this letter is to "Request a Reasonable Accommodation" under Section 13.30 of Malibu's Local Coastal Program ("LCP") to allow our Project to move forward.

We view such an accommodation as unnecessary because the City is legally obligated under both the recently enacted statewide ADU laws and the language of its own LCP *at Section 13.4.1* (existing and as proposed to be amended) to process and approve our ADU on an administrative basis within sixty (60) days of our application. Nevertheless, because the City has not performed, we make this formal "Request for a Reasonable Accommodation" to facilitate moving the Project forward without further delay.

ATTACHMENT 5

Elizabeth's mother, Renee Sperling is 82 years old and suffers from numerous ailments, including glaucoma, arthritis, asthma and osteoporosis. Renee has a handicap placard issued by the California State Department of Motor Vehicles. She is disabled and protected by the Federal Housing Act and the California Fair Employment and Housing Act (hereafter, the "Acts"). We are building the ADU so that she may age in place with us and her three grandchildren, while maintaining her independence.

Brief Background

It is undisputed that our planned ADU fully complies with California law, and has no potential for adverse impacts on environmentally sensitive habitat area, public access, public views or other coastal resources.[1] This is why you have characterized our project as "like a posterchild for why the ADU Law was created."

Unfortunately, on October 9, 2020, the City notified us that our Project could not be ministerially-administratively approved and was put on hold from any further review for the following two narrow reasons: (i) the ADU supposedly caused our lot to exceed the City's total allowable development square footage ("TDSF") by 486 square feet and (ii) the ADU did not comply with the cumulative set back requirement of the LCP. Specifically, City Staff stated:

> "Local jurisdictions are required to comply with state provisions allowing and permitting of accessory dwelling units (ADU). However, per the California Coastal Commission, Government Code section 65852.2 does not supersede currently certified provisions of Local Coastal Programs (LCP). Therefore, until an amendment to the LCP is adopted, the provisions of the LCP will continue to apply to Coastal Development permit applications for ADU's. . . [and] the project … requires applications for variances for side and rear yard setbacks, and for exceeding the maximum allowed total development square footage. While applications for ADU's are reviewed ministerially, requests for discretionary approvals such as variances require a public hearing by the City's Planning Commission."

While agreed that the City must abide by its LCP, we strongly disagreed with the City's conclusion that there was an inconsistency between the LCP and statewide ADU law such that our Project required discretionary approval by the Planning Commission. Accordingly, on December 7, 2020, we submitted a letter to the City explaining in detail

---

[1] Our Project is located in the fenced backyard of our single-family home located in the residential neighborhood on the inland side of PCH known as Malibu West (established in 1962). It has been approved by the Home Owner's Association of Malibu West.

our analysis of why the City's conclusion that our Project could not move forward administratively was in error.[2] The gist of our letter is that there is no actual conflict between California statewide law and Malibu's LCP with respect to attached ADUs because both dictate that attached ADUs with no potential for adverse environment impacts (i.e., our Project) must be ministerially- administratively approved, provided that all other conditions for an ADU are met (which they are here).[3]

The California Coastal Commission is in full agreement with us. In an April 21, 2020 Memorandum, Executive Director John Ainsworth provides specific guidance to planning directors of coastal cities such as Malibu regarding how they should interpret the language of their existing LCPs when deciding applications to build attached ADUs. Ainsworth confirms that attached ADUs should be deemed exempt from the set back and TDSF requirements under language identical to Malibu's LCP Section 13.4.1, stating:

> "**[T]he construction** or conversion o**f an ADU**/JADU contained within or **directly attached to an existing single-family residence would qualify as an exempt improvement to a single-family residence. (Cal. Code Regs., tit. 14, § 13250(a)(1).)**" [4]

Unfortunately, Malibu planning staff still refused to allow our Project to move forward. The only reason the City offered is its statement that "there is no provision in the existing, certified Malibu LCP that allows your ADU project as proposed to go forward in violation of the setback and TDSF standards in the City's certified LCP."[5] The City did not address the California Coastal Commission's guidance cited above explaining that, in fact, attached ADUs qualify as "exempt improvements" under Section 13.4.1 of Malibu's existing LCP.[6]

---

[2] Under California Government Code Section 65852.2 ("Section 65852.2"), as of January 1, 2020, all local governments in California **must** allow at least an 800 square foot accessory dwelling unit to be constructed that is at least 16 feet in height with 4-foot side and rear yard setbacks, provided all other ADU statutory requirements are satisfied. City imposed limits on lot coverage, floor area ratio (i.e., "TDSF"), open space, and minimum lot size restrictions may **not** be used if they prohibit the construction of an ADU that, like ours, meets all the state-wide specifications. While it is true the state-wide ADU laws contain a "carve out" that allows Cities to follow different rules if expressly dictated by their pre-existing LCPs, Malibu's LCP does dictate any different result. Specifically, our Project is exempt from the LCP's requirements under the plain language of Section 13.4.1(A) of Malibu's LCP, which allows attached ADUs with no potential for adverse environment impacts such as ours to be approved administratively by staff. *See* Ex. A [Dec. 7, 2020 Ltr.]

[3] *Compare* Malibu's Local Coast Program ("LCP") at § 13.4.1(A) *with* Cal. Code Regs., tit. 14, § 13250(a)(1) and Cal. Pub. Resources Code § 30610; see also Ex. A [Dec 7, 2020 Ltr. to City]

[4] See Ex. B [Ainsworth's April 21, 2020 Memorandum] at p. 5 (emphasis added).

[5] See Ex. C [February 24, 2020 Response Ltr. From City]

[6] Ex. D [Email From Riddick Family to Trevor Rusin and Richard Mollica dated Feb 24, 2021]

Indeed, the City's own draft set of proposed amendments to Malibu's LCP - designed to harmonize it with statewide ADU law - makes the point even more explicit, tacking on the following proposed verbiage to the existing Section 13.4.1:

> "**Attached accessory dwelling units** or accessory dwelling units located in an existing accessory structure **shall be exempt from obtaining a Coastal Development Permit if it is consistent with the LCP, and has no potential for adverse effects, either individually or cumulatively, on coastal resources.**"

Ex. E [Malibu's Draft Amendment To ADU Ordinance, dated December 13, 2019]. Thus, under the existing LCP as well as its proposed amended version, our Project should have been approved ministerially-administratively. There is no reason to "wait" for the proposed amendment to be passed or not passed.

Request for a Reasonable Disability Accommodation

While our Project should not even require a disability accommodation for the reasons set forth above, we nevertheless meet all of the requirements for such an accommodation under Section 13.30 of Malibu's LCP, and our request should be granted. Specifically, under Section 13.30, our "Project" is necessary to provide accessible housing for Renee Sperling, an 82-year-old, disabled senior citizen. Our project:

- Does not impose an undue financial or administrative burden on the City ;
- Does not require a fundamental alteration in the nature of the LCP (nor, we would argue, any alternation whatsoever);
- Does not have the potential to adversely impact wetlands, environmentally sensitive habitat area, public access, public views and/or other coastal resources;
- Has been approved by the Los Angeles County Fire Department;
- Has been approved by the City of Malibu's Geologist;
- A proposed site plan is already on file with the City;
- Has been approved by our Homeowners Association; and
- **Is in full compliance with the Malibu City Planning Staffing's own Draft ADU Ordinance dated December 13, 2019.**[7]

Providing a place to live for disabled seniors, such as Elizabeth's mother, Renee

[7] Ex. E [Malibu City Planning Staffing's Draft ADU Ordinance dated December 13, 2019.]

Sperling, is a core purpose of the ADU laws. According to the California Housing and Community Development Department, ADUs are designed to "give homeowners the flexibility to share independent living areas with family members and others, **allowing seniors to age in place as they require more care**, thus helping extended families stay together while maintaining privacy."[8]

Our Project is intended to provide housing for Elizabeth Riddick's mother who is a disabled person under the Federal Housing Act and the California Fair Employment and Housing Act, which apply to the application by cities of zoning laws and other land use regulations, policies and procedures, including – as relevant here - the application of the allowable square footage (TDSF) and setback requirements.

The Acts makes it **unlawful** for a City or local government to refuse "to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford ... person(s) [with disabilities] equal opportunity to use and enjoy a dwelling."[9] The Acts further state that persons with qualifying impairments, diseases and conditions, such as orthopedic, visual, speech and hearing impairments, are considered protected under the Acts.[10]

Ms. Sperling is 82-year-old, and suffers from Glaucoma, Arthritis, Asthma and Osteoporosis.[11] Accordingly, Ms. Sperling carries a handicap placard issued by the California State Department of Motor Vehicles.[12] According to Ms. Sperling's doctors:

> "Renee Sperling suffers from deforming psoriatic arthritis and severe knee osteoarthritis. She is disabled. **She needs to live near her family to care for her**."
>
> "Ms. Sperling suffers from glaucoma. Glaucoma is a chronic disease in which damage to the optic nerve can lead to progressive, irreversible vision loss. **Ms. Sperling struggles with her vision and is on a complex medical regimen. Assistance in administering eye drops and adhering to the schedule by a third party is extremely valuable**."

Ex. H [Doctor's Note] & Ex. I [Doctor's Note].

---

[8] Ex. F [California Housing and Community Development ADU Handbook] at p. 4 (emphasis added) This Handbook contains specific language for how coastal communities, such as ours, should address ADU permitting when conflict with LCPs to ensure ADUs can proceed expeditiously.

[9] Ex. G Joint Statement of the Department of Housing and Urban Development and the Department of Justice Reasonable Accommodations Under the Fair Housing Act

[10] Ex. G Joint Statement of the Department of Housing and Urban Development and the Department of Justice Reasonable Accommodations Under the Fair Housing Act

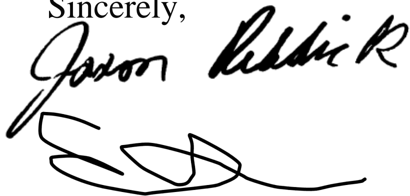
[11] Ex. H [Doctors Note 1] and Ex. I [Doctor's Note 2]

[12] Ex. J [Picture of Handicap Placard]

Ms. Sperling only desires to indefinitely live independently but with her family and to be able to safely age with them, while maintaining her privacy. To prevent her from living with us (with a modicum of privacy in our backyard) because of an interpretation of allowable square footage and setback allowance in an improper manner that directly conflicts with (1) State law, (2) Malibu's existing LCP exemption language and (3) Malibu's proposed amended LCP exemption language would not just be wrong, it would be cruel.

Accordingly, we respectfully request that you grant us a reasonable accommodation and approve our permit expeditiously. The accommodation is reasonable and minimal because we are simply asking the City to comply with pre-existing California State Law, the plain language of Section 13.4.1(A) of Malibu's LCP**,** clear guidance from the California Coastal Commission, and last but not least, the City Planning Staffs' own draft recommendation regarding permits for attached ADUs.

Sincerely,



Jason and Elizabeth Riddick
310-490-2777
elizabethriddick@hotmail.com
jason_riddick@hotmail.com

EXHIBIT I

RESOLUTION NO. 21-47

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU, DETERMINING THE PROJECT IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA), AND DENYING APPEAL NO. 21-008; AND DENYING REQUEST FOR REASONABLE ACCOMMODATION NO. 21-001 PURSUANT TO LOCAL COASTAL PROGRAM LOCAL IMPLEMENTATION PLAN (LIP) SECTION 13.30 TO ALLOW RELIEF FROM THE ZONING PROVISIONS OF THE LIP, AS THEY CURRENTLY APPLY TO AN APPLICATION FOR A NEW ATTACHED ACCESSORY DWELLING UNIT (ADU) AND ADDITIONS TO AN EXISTING SINGLE-FAMILY RESIDENCE; AND ALSO DENYING COASTAL DEVELOPMENT PERMIT NO. 20-034 WHICH WOULD ALLOW THE AFOREMENTIONED DEVELOPMENT TO ENCROACH INTO THE REAR AND SIDE YARD SETBACKS AND EXCEED THE MAXIMUM ALLOWED TOTAL DEVELOPMENT SQUARE FOOTAGE AND TOTAL IMPERVIOUS LOT COVERAGE FOR THE PARCEL, LOCATED IN THE SINGLE-FAMILY (SF-L) ZONING DISTRICT AT 6255 PASEO CANYON DRIVE (RIDDICK)

The City Council of the City of Malibu does hereby find, order and resolve as follows:

SECTION 1. Recitals.

A. On July 10, 2020, Coastal Development Permit (CDP) No. 20-034 was submitted to the Planning Department by applicants and property owners Elizabeth and Jason Riddick. The application was routed to City geotechnical staff and the City Public Works Department for review.

B. On April 19, 2021, an application for Request for Reasonable Accommodation was submitted to the Planning Department by applicants and property owners Elizabeth and Jason Riddick. As the request involves permanent development, the Planning Director referred the request and CDP No. 20-034 to the Planning Commission for its consideration at its next available hearing date.

C. On May 27, 2021, a Notice of Coastal Development Permit and Request for Reasonable Accommodation Applications was posted on the subject property.

D. On May 27, 2021, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500-foot radius of the subject property, which the 10 closest lots, as required by the RRA.

E. On June 7, 2021, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record.

F. On June 17, 2021, the owners and applicants Elizabeth and Jason Riddick filed an appeal of the Planning Commission's decision.

G. On July 15, 2021, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a radius of 500 feet from the subject property and all interested parties.

H. On August 9, 2021, prior to the opening of the public hearing, the City Council continued the hearing to the August 19, 2021 Adjourned Regular City Council meeting.

I. On August 19, 2021, the City Council held a duly noticed public hearing on the subject appeal, reviewed and considered the agenda report, reviewed and considered written reports, public testimony, and other information in the record.

SECTION 2. Appeal of Action.

The appellant states the reason for the basis of the appeal was due to the City's incorrect application of the City's Local Coastal Program (LCP), and inaccurate interpretation of state Accessory Dwelling Unit (ADU) law and California Coastal Commission guidance on ADU law, in denying an application for a new ADU. The appellant also objects to the City's findings that a request for reasonable accommodation cannot be made to exempt the proposed ADU from specific zoning requirements of the LCP.

SECTION 3. Findings for Denying the Appeal.

Based on evidence in the record and in the Council Agenda Report for the project, the City Council hereby makes the following findings of fact, denies the appeal and finds that the evidence in the record supports the required findings for denial of the project. In addition, the relevant analysis, findings of fact, and conclusions set forth by staff in the Council Agenda Report and Planning Commission Agenda Report, as well as the testimony and materials considered by the Planning Commission and City Council are incorporated herein by reference.

1. The proposal for an attached ADU does not qualify for an exemption from the requirement of a CDP. Per the technical guidance dated April 21, 2020 from the California Coastal Commission to Coastal Cities and Counties, "currently certified provisions of LCPs are not superseded by Government Code Section 65852.2 and continue to apply to CDP applications for ADUs until an LCP amendment is adopted." The proposed ADU is an attached addition to the existing single-family residence. LIP 13.4.1 (A) addresses this very scenario and explains that while an exemption exists from the LIP's CDP requirement for improvements to existing single-family residences, an exception to this exemption is "accessory self-contained residential units." Adopting the position of the Project applicant would in practice delete the "accessory self-contained residential units" language from LIP 13.4.1(A). Specifically, the language would in effect have zero meaning as this application and all future ADU applications (*i.e.,* self-contained residential units) would nevertheless be considered exempt as an improvement to the existing single-family residences. Even if the applicant's interpretation of the California Coastal Commission's memo to Planning Directors is accurate (which staff disputes), the memorandum cannot, and does not, supersede the plain language of the City's LIP. Malibu's LCP is certified by the California Coastal Commission to implement the California Coastal Act. The LCP is an extension of state regulations and is not superseded by state ADU law.

2. Malibu's LCP is certified by the California Coastal Commission to implement the California Coastal Act. The LCP is an extension of state regulations and is not superseded by state ADU law. As explained above, the proposed project is not exempt from the requirement to obtain a CDP. Thus, the contention that only the State's ADU law applies is not accurate

3. Malibu LIP section 13.30(E) lists the required findings that must be made in order to grant a request for a reasonable accommodation. Those findings are as follows:

(1) The housing, which is the subject of the request, will be occupied by a person with a disability.
(2) The approved reasonable accommodation is necessary to make housing available to a person with a disability.
(3) The approved reasonable accommodation would not impose an undue financial or administrative burden on the City.
(4) The approved reasonable accommodation would not require a fundamental alteration in the nature of the LCP.
(5) The approved reasonable accommodation would not adversely impact coastal resources.
(6) The project that is the subject of the approved reasonable accommodation conforms to the applicable provisions of the LCP and the applicable provisions of this section, with the exception of the provision(s) for which the reasonable accommodation is granted.

The Planning Commission found that required findings (2) through (5) could not be met. While finding (1) (housing will be occupied by a person with a disability) was made, this finding was only for the present. The applicant provided no assurances or mechanism to ensure that the requested housing accommodation would only be used as housing by a person with a disability in perpetuity. The rest of the findings could not be made as explained in the Planning Commission denial.

The applicant has not provided any authority (nor has the City found any authority), that this type of requested accommodation is appropriate under the federal and state Fair Housing Acts. The cases and examples cited by the applicant (*i.e.,* failing to waive minimum financial requirements to rent an already existing apartment and refusing to allow cosigners, failing to provide reasonable parking accommodations, and developers being denied variances to build any housing) are all inapposite. No authority was cited where an existing house exists that could provide housing for the disabled person but an ADU in violation of local requirements was nevertheless granted. Here, a house exists and the City is in no way preventing the applicant from reconfiguring the existing house to allow the disabled person (the applicant's elderly mother) to reside there. Rather, the Planning Commission made the determination that the requested accommodation in the form of the proposed addition of the ADU does not meet the required findings.

What is more, the applicant makes no argument whatsoever (as none exist) as to why additions to the master bedroom and master bathroom qualify as a reasonable disability accommodation. These requests are entirely unrelated to the disability accommodation and staff is unable to determine that these project components are consistent with the above required findings.

As to the applicant's appeal arguments, they are addressed as follows.

1. Housing for a disabled person can be met through conversion or reconfiguration of existing floor area, or at minimum a proposal that better conforms to the LIP's existing zoning requirements. The existing floor plan shows potential options for an attached ADU in the conversion of the existing oversized garage and combination or reducing in size of common living areas. The applicant has not submitted any plan proposals beyond the initial plan submittal to study design alternatives. The applicant's argument that the disabled person requires a "healthy distance" from her three young grandchildren is belied by the applicant's request to attach the ADU to the existing residence. Further, the applicant

provides no detail on what qualifies as a "healthy distance" and dismisses the idea of rearranging the existing house as it would result in the entire family "bunching up." Staff does not understand why residing in an attached ADU versus in an existing room would provide greater safety and wellbeing. Additionally, the current proposal includes additions and alterations, such as the augmenting the master bedroom and bathroom, that do not meet zoning standards and are not related to providing housing for a disabled person. Therefore, the reasonable accommodation is not necessary to make housing available to a person with a disability.

2. Approvals of reasonable accommodations are typically made for reasonable accommodation to enjoy a residential living unit that does not currently exist. Here, a house exists where the disabled person can reside. Further, while the applicant states that no legal basis exists for the City to monitor that the requested accommodation is occupied by a disabled person, LIP 13.30 (J) states otherwise. This section requires that unless the City determines that the reasonable accommodation runs with the land,[1] a reasonable accommodation shall lapse if the rights granted by it are discontinued for one hundred eighty (180) consecutive days. The applicant has submitted no plan whatsoever to confirm that the reasonable accommodation will only used by a disabled person and what the applicant will do upon termination of the use.

3. The LCP aims to protect and maintain the overall quality of the coastal zone environment, assure orderly utilization and conservation of coastal zone resources, maintain public access, prioritize coastal-dependent and coastal-related development, and encourage state and local initiatives and cooperation in the implementation of coordinated planning and mutually beneficial uses in the coastal zone. To achieve these objectives, a goal of the LCP is also to promote the fair treatment of all people in the City's application of laws, regulations, and policies. Granting the request for reasonable accommodation would allow the limitations of the LIP to be exceeded, not because it is required to accommodate a person with a disability, but rather because the homeowner does not want to convert a portion of their existing home to accommodate that person. Granting the request for reasonable accommodation would fundamentally change the nature of the TDSF limits in the City as it would set a precedent for exceeding the TDSF via applications for ADUs. It would create a process that incentivizes a RRA request to build an ADU no matter how temporary the use may be or tenuous the justification is for the disability. Further, because the applicant makes no provision for what to do once the request for reasonable accommodation use is discontinued by the disabled person, the end result would be numerous ADUs built above the limitations of the LIP and used by the non-disabled.

4. The proposed reasonable accommodation will allow construction of an ADU and other development in an existing residential subdivision developed with similar single-family residences and accessory structures. The Planning Department, City Public Works Department, and City geotechnical staff have reviewed the project and found that it will not adversely impact coastal resources. However, if granted, this will undoubtedly have cumulative impacts on coastal resources as other property owners will undoubtedly seek

1 Implicit in applicant's appeal appears to be an assertion that this accommodation would run with the land and the City has no authority and ability to monitor or check that the reasonable accommodation is actually for someone who is disabled. This could produce a result where the disabled person either never lives in or resides briefly in the reasonable accommodation.

similar reasonable disability accommodations in the form of ADUs that exceed the City's LIP when existing housing already exists.

In sum, the applicant's proposal (including the additions to the master bedroom and master bathroom) does not meet the required LIP findings. While City staff is sympathetic to the applicant's desire to provide housing for an elderly mother, no other design proposals or reconfigurations of the existing developed area have been presented to the City.

SECTION 4. Environmental Review.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the City Council has analyzed the proposed project. The City Council finds that Pursuant to CEQA Guidelines Section 15270, CEQA does not apply to projects which a public agency rejects or disapproves.

SECTION 5. Coastal Development Permit Findings.

Based on substantial evidence contained within the record and pursuant to LIP including Sections 13.7(B) and 13.9, the City Council adopts the analysis in the agenda report, incorporated herein, the findings of fact below, and denies CDP No. 20-034 for the partial demolition and additions and alterations to an existing 3,000 square foot single-family residence resulting in a net addition of 571 square feet, which includes a new 426 attached ADU, and would encroach into minimum required rear and side yard setbacks and exceed the maximum allowed TDSF and TILC; and denies RRA 20-001, which would allow relief from the zoning provisions of the LIP, as they currently apply to the new ADU and associated development.

The proposed project has been determined to not be consistent with all applicable requirements of the LCP, specifically LIP Section 3.6(K) in that the project is exceeding the allowable TDSF on site. The required findings for denial of the requested variance are made herein.

A. General Coastal Development Permit (LIP Chapter 13)

1. The proposed project is located in the SFL residential zoning district, an area designated for residential uses. The proposed project has been reviewed for conformance with the LCP by the Planning Department, City Public Works Department, City geotechnical staff, and LACFD. As discussed herein, based on submitted reports, project plans, visual analysis and site investigation, the proposed project does not conform to the LCP as it violates residential development standards for required minimum rear and side yard setbacks and maximum allowed TDSF and TILC. If the RRA is granted then the project, as conditioned, would conform to the LCP in that it meets all applicable residential development standards.

2. The project is not located between the first public road and the sea. In addition, the subject property does not contain any mapped trails as depicted on the LCP Park Lands Map. Therefore, this finding is not applicable.

3. This analysis assesses whether alternatives to the proposed project would significantly lessen adverse impacts to coastal resources.

Proposed Project: The project proposes partial demolition and additions and alterations to an existing single-family residence. The project will result in a new attached ADU and an expansion

of the master bedroom/bathroom. The ADU and the addition to the primary residence do not conform to the zoning requirements of the LIP with respect to rear and side yard setbacks, TDSF, and TILC.

Alternative Project: The project seeks significant departures from the requirements of the LCP. Exceeding the TDSF limit in particular is a standard that is rarely, if ever, found to be in compliance with the LCP. These departures could be avoided in a number of ways. For example, the applicant could propose an addition that comply with the TDSF limit for the property and convert a larger portion of the existing home to the ADU. Such an alternative could comply with the LCP and result in less site disturbance.

4. The subject property is not in a designated ESHA or ESHA buffer as shown on the LCP ESHA and Marine Resources Map. Therefore, Environmental Review Board review was not required, and this finding does not apply.

B. Request for Reasonable Accommodation (LIP Section 13.30)

1. The applicant has submitted documentation from medical providers stating that the intended occupant of the proposed ADU is a person with a disability. However, the proposed additions to the master bedroom and bathroom are not intended to be used by a disabled person.

2. An approved reasonable accommodation would accommodate construction of an ADU to make housing available to a person with a disability. However, housing for a disabled person could be met through alternative means without reasonable accommodation, through the conversion and reconfiguration of existing floor area. Therefore, this finding cannot be made.

3. Approval of the reasonable accommodation will not require an undue amount of additional staff time and resources for review of the application; however, it will it require ongoing monitoring and administrative costs to determine that the ADU is occupied by a disabled person.

4. The LCP aims to protect and maintain the overall quality of the coastal zone environment, assure orderly utilization and conservation of coastal zone resources, maintain public access, prioritize coastal-dependent and coastal-related development, and encourage state and local initiatives and cooperation in the implementation of coordinated planning and mutually beneficial uses in the coastal zone. To achieve these objectives, a goal of the LCP is also to promote the fair treatment of all people in the City's application of laws, regulations, and policies. Granting the request for reasonable accommodation would allow the limitations of the LIP to be exceeded, not because it is required to accommodate a person with a disability, but rather because the homeowner does not want to convert a portion of their existing home to accommodate that person. Granting the RRA would fundamentally change the nature of the TDSF limits in the City as it would set a precedent for exceeding the TDSF via applications for ADUs. It would create a process that favors those with the resources to pursue a request for reasonable accommodation as an incentive.

5. The proposed reasonable accommodation will allow construction of an ADU in an existing residential subdivision developed with similar single-family residences and accessory structures. The Planning Department, City Public Works Department, and City geotechnical staff have reviewed the project and found that it will not adversely impact coastal resources other than by setting a precedent of allowing greater development in the coastal zone.

6. Approval of the request for reasonable accommodation would provide relief from the required side and rear yard setbacks, and maximum allowed TDSF and TILC required under the LCP for the ADU and the master bathroom and bedroom for the primary residence. The portion of the project that proposes to expand the master bedroom and bathroom does not conform to applicable provisions of the LCP. The project would only conform if the Planning Commission found that the expansion of the master bedroom and bathroom qualifies for relief through the request for reasonable accommodation by meeting the findings required above.

C. Environmentally Sensitive Habitat Area Overlay Chapter (LIP Chapter 4)

1. The subject property is not in a designated ESHA, or ESHA buffer, as shown on the LCP ESHA and Marine Resources Map. Therefore, the findings of LIP Section 4.7.6 are not applicable.

D. Native Tree Protection (LIP Chapter 5)

1. There are no native trees on or adjacent to the subject parcel. Therefore, the findings of Chapter 5 are not applicable.

E. Scenic, Visual and Hillside Resource Protection (LIP Chapter 6)

1. The Scenic, Visual, and Hillside Resource Protection Chapter governs those coastal development permit applications concerning any parcel of land that is located along, within, provides views to or is visible from any scenic area, scenic road or public viewing area. The subject property is not located along, within, nor provides views to or is visible from any scenic area, scenic road or public viewing area. Therefore, the findings LIP Chapter 6 are not applicable.

F. Transfer of Development Credit (LIP Chapter 7)

1. The proposed project does not include a land division or multi-family development. Therefore, the findings of LIP Chapter 7 are not applicable.

G. Hazards (LIP Chapter 9)

Pursuant to LIP Section 9.3, written findings of fact, analysis and conclusions addressing geologic, flood and fire hazards, structural integrity or other potential hazards listed in LIP Sections 9.2(A)(1-7) must be included in support of all approvals, denials or conditional approvals of development located on a site or in an area where it is determined that the proposed project causes the potential to create adverse impacts upon site stability or structural integrity.

The proposed development has been analyzed for the hazards listed in LIP Chapter 9 by the Planning Department, City Public Works Department, City geotechnical staff, and LACFD. The required findings are made as follows:

1. Based on review of the project plans and associated reports by City Environmental Health Administrator, City Public Works Department, City geotechnical staff, and LACFD, these specialists determined that adverse impacts to the project site related to the proposed development are not expected. The proposed project will neither be subject to nor increase the instability from geologic, flood, or fire hazards. In summary, the proposed development is suitable for the intended use provided that the certified engineering geologist and/or geotechnical engineer's

recommendations and governing agency's building codes are followed.

Fire Hazard

The entire City of Malibu is designated as a Very High Fire Hazard Severity Zone, a zone defined by a more destructive behavior of fire and a greater probability of flames and embers threatening buildings. The subject property is currently subject to wildfire hazards. The scope of work proposed as part of this application is not expected to have an adverse impact on wildfire hazards.

The City is served by the LACFD, as well as the California Department of Forestry, if needed. In the event of major fires, the County has "mutual aid agreements" with cities and counties throughout the State so that additional personnel and firefighting equipment can augment the LACFD. Conditions of approval have been included in the resolution to require compliance with all LACFD development standards. As such, the proposed project, as designed, constructed, and conditioned, will not be subject to nor increase the instability of the site or structural integrity involving wildfire hazards.

2. As stated in Finding 1, the proposed project, as designed, conditioned and approved by the applicable departments and agencies, will not have any significant adverse impacts on the site stability or structural integrity from geologic or flood hazards due to project modifications, landscaping or other conditions.

3. As previously stated in Section A, the proposed project, as designed and conditioned, is the least environmentally damaging alternative.

4. The proposed development has been analyzed for the hazards listed in LIP Chapter 9 by the Planning Department, City Public Works Department, City geotechnical staff, and LACFD. It has been determined that the proposed project does not impact site stability or structural integrity.

5. As discussed in Section A, the proposed project, as designed and conditioned, is the least environmentally damaging alternative and no adverse impacts to sensitive resources are anticipated.

H. Shoreline and Bluff Development (LIP Chapter 10)

The project site is not located on or along the shoreline, a coastal bluff or bluff top fronting the shoreline. Therefore, the findings of LIP Chapter 10 are not applicable.

I. Public Access (LIP Chapter 12)

LIP Section 12.4 requires public access for lateral, bluff-top, and vertical access near the ocean, trails, and recreational access for the following cases:

A. New development on any parcel or location specifically identified in the Land Use Plan or in the LCP zoning districts as appropriate for or containing a historically used or suitable public access trail or pathway.
B. New development between the nearest public roadway and the sea.

C. New development on any site where there is substantial evidence of a public right of access to or along the sea or public tidelands, a blufftop trail or an inland trail acquired through use or a public right of access through legislative authorization.
D. New development on any site where a trail, bluff top access or other recreational access is necessary to mitigate impacts of the development on public access where there is no feasible, less environmentally damaging, project alternative that would avoid impacts to public access.

As described herein, the subject property and the proposed project do not meet any of these criteria in that no trails are identified on the LCP Park Lands Map on or adjacent to the property, and the property is not located between the first public road and the sea, or on a bluff or near a recreational area. The requirement for public access of LIP Section 12.4 does not apply and further findings are not required.

J. Land Division (LIP Chapter 15)

This project does not include a land division. Therefore, the findings of LIP Chapter 15 are not applicable.

SECTION 6. City Council Action.

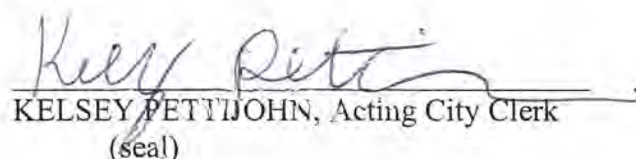
Based on the foregoing findings and evidence contained within the record, the City Council hereby denies CDP No. 20-034 and RRA 21-001.

SECTION 7. The City Clerk shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 19th day of August 2021.

PAUL GRISANTI, Mayor

ATTEST:



KELSEY PETTIJOHN, Acting City Clerk
(seal)

APPROVED AS TO FORM:

JOHN COTTI, Interim City Attorney

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 21-47 was passed and adopted by the City Council of the City of Malibu at the Adjourned Regular meeting thereof held on the 19th day of August 2021 by the following vote:

AYES:	3	Councilmembers:	Farrer, Uhring, Grisanti
NOES:	0		
ABSTAIN:	0		
ABSENT:	2	Councilmembers:	Pierson, Silverstein

KELSEY PETTIJOHN, Acting City Clerk
(seal)

CITY OF DANA POINT

AGENDA REPORT

Reviewed By:	
DH	X
CM	X
CA	X

DATE: AUGUST 9, 2021

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: BRENDA WISNESKI, DIRECTOR OF COMMUNITY DEVELOPMENT
PATRICK MUNOZ, CITY ATTORNEY

SUBJECT: LOCAL COASTAL PROGRAM AMENDMENT LCPA19-0002/ZONE TEXT AMENDMENT ZTA19-0002(I), RELATED TO JOINT USE OF PARKING FACILITIES AND PUBLIC NOTIFICATION AND ZONE TEXT AMENDMENT ZTA19-0002(II) RELATED TO ACCESSORY DWELLING UNITS

RECOMMENDED ACTION:

1) Conduct a public hearing; and

2) Adopt the following Resolution approving and requesting certification of LCPA19-0002 from the California Coastal Commission:

   A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, FOR SUBMISSION OF ZTA19-0002(I) RELATED TO JOINT USE OF PARKING AND PUBLIC NOTIFICATION AS LOCAL COASTAL PROGRAM AMENDMENT LCPA19-0002 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION (ACTION DOCUMENT A);

3) Introduce for first reading of an Ordinance entitled:

   AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING ZONE TEXT AMENDMENT ZTA19-0002(I) TO MODIFY THE ZONING CODE RELATED TO JOINT PARKING PROVISIONS AND PUBLIC NOTIFICATION AND SUBMISSION AS PART OF LOCAL COASTAL PROGRAM AMENDMENT LCPA19-0002 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION. (ACTION DOCUMENT B)

4) Introduce for first reading of an Ordinance entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING ZONE TEXT AMENDMENT ZTA19-0002(II) TO MODIFY THE ZONING CODE RELATED TO ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS. (ACTION DOCUMENT C)

BACKGROUND:

Following a series of meetings which commenced on July 8, 2019, the Planning Commission finalized their recommendation for a Local Coastal Program Amendment (LCPA) and Zone Text Amendment (ZTA) to address the following:

1. *Joint Use Parking Facilities* - Expand the distance parking facilities can be shared from 300 feet to a ¼ mile.
2. *Public Notification Modifications* - Increasing the noticing period and on-site posting for non-residential projects.
3. *Accessory Dwelling Units* – Revisions required to comply with State-mandate set forth in Government Code section 65852.2 ("State Law" or the "Statute") to streamline and promote the development of accessory dwelling units ("ADUs") and junior accessory dwelling units ("JADUs").

On March 9, 2020, Staff and the Planning Commission conducted a public workshop that focused on the three above-listed topics. On April 13, 2020, the Planning Commission unanimously adopted a Resolution recommending the City Council approve the proposed Zoning Code Amendments. (Links: March 9, 2020 Planning Commission Agenda Packet, April 13, 2020 Planning Commission Agenda Packet)

Following the Planning Commission's public hearing, Staff contacted the State's Housing and Community Development Department ("HCD") for input regarding the draft ADU/JADU Ordinance. While the majority of HCD's comments were minor in nature, HCD provided some substantive input on items that were discussed in detail by the Planning Commission at its April 13 meeting. As a result, Staff determined it would be appropriate to bring the LCPA/ZTA back to the Planning Commission, with HCD's comments, for its reconsideration. The City's decisions in regards to ADU/JADUs are subject to HCD approval.

On May 27, 2020, the Planning Commission met to consider revising their recommendations regarding ADUs in light of HCD's comments. After a lengthy discussion, the Planning Commission adopted a Resolution recommending that the City Council approve an Ordinance that incorporates some, but not all, of HCD's suggested modifications. In particular, the Planning Commission did not recommend incorporating HCD's suggested changes with respect to the maximum size/bedroom count limitation, building separation requirements, and ADUs in multi-family developments. Each of these issues, as well as other key components of the proposed Ordinance/ZTA related to ADUs (such as height limitations, parking requirements, and various incentives) are discussed in further detail below. (Link: May 27, 2020 Planning Commission Agenda Packet)

On June 16, 2020, the proposed Amendments were scheduled for public hearing by the City Council, but the item was pulled from the agenda by Staff. In July 2020, a survey was developed and circulated to Orange County cities to determine the status of other local ADU Ordinances (Link: June 16, 2020 City Council Agenda Packet).

On October 6, 2020, the proposed Amendments were scheduled for public hearing by the City Council, but the item was pulled from the agenda by Staff to allow additional opportunity to evaluate the ADU state law provisions as it relates to the community. Since the original draft was proposed, several ADUs have been permitted in accordance with the state law which has allowed the City Staff to clarify the draft regulations and incorporate appropriate modifications (Link: October 6, 2020 City Council Agenda Packet).

DISCUSSION:

The following provides background and information about the LCPA and ZTA modifications proposed.

Joint Use of Parking Facilities

Pursuant to the Citywide Parking Implementation Plan and public workshops, the Joint Use of Parking Facilities draft language would increase the distance parking facilities may be shared from 300 feet to a ¼ mile. Additionally, the Planning Commission is recommending the word "attractive" be removed from DPZC Section 9.35.060 (c)(3)(B) in describing the required pedestrian path to parking facilities, as it is a subjective standard.

Public Notification Modifications

The amendment would increase the mailing noticing period from 10 days to 14 days and require on-site posting for non-residential projects. If on-site posting is required for a project, the necessary notices will be provided by Staff to the applicant.

Accessory Dwelling Units/Junior Accessory Dwelling Units

The amendment would repeal and replace the City's prior second dwelling unit ordinance, which was nullified by the passage of a series of State ADU laws in 2020. The new ordinance, if adopted, would establish development standards for ADUs and JADUs throughout the City, except those located within the Coastal Zone. The ADU regulations contained in the City's Local Coastal Program which apply in the Coastal Zone were not impacted by the 2020 ADU laws. They will continue to govern ADU development in the Coastal Zone until a Local Coastal Program Amendment is processed by the City, approved by the Coastal Commission, and adopted by the City along with any suggested modifications from the Coastal Commission. It is important to note that given the increased demand for ADUs within the City, Staff believed that was important to bring this Ordinance forward at this time in order to establish clear development standards for its residents as soon as possible, even though the proposal will result in different standards within and outside of the Coastal Zone until a later point in time.

At a high level, the Ordinance establishes three categories of ADUs in the City outside of the Coastal Zone, each of which have their own development standards:

1. ADUs that are subject to mandatory approval under State Law, with the relevant developement standards being provided by State Law.
2. ADUs that do not qualify for mandatory approval but still must be considered ministerially, with the relevant development standards being provided by the regulations permitted by State Law which are being added to the City's Zoning Code; and
3. ADUs that do not meet the development standards provided in category (1) or (2) and thus are not eligible for ministerial approval, but still may be approved after going through a discretionary process and obtaining a Site Development Permit.

All three types of ADUs are required to apply for and obtain an ADU Pemit (in addition to a building permit or any other permit required) prior to commencing construction. While the development standards vary slightly depending on which of the three categories the ADU falls within, below is a summary of the development standards that generally apply to ADUs outside of the Coastal Zone:

- Maximum Height: 16 feet, one story (but an attached ADU may be constructed on a portion of the second floor of an existing two story primary dwelling).
- Maximum Number:
  - Single Family Districts: 1 ADU and 1 JADU
  - Multi-Family Districts: 1 attached ADU
- Maximum Size:
  - Attached: 50% of primary dwelling, capped at 850 SF (1 bedroom) /1000 SF (2 bedroom)
  - Detached: 850 SF (1 bedroom) /1000 SF (2 bedroom)
- Maximum Bedrooms: 2
- Side/Rear Yard Setbacks: 4 feet (no projections allowed)
- Front Yard Setback: underlying zoning district
- Building Separation: 10 feet
- Use Restrictions: cannot be separately sold or rented for less than 30 days; owner occupied in 2025; deed restriction required.
- HOA Approval: Required
- Building Code Compliance: Required.
- Location Requirements:
  - Rear ½ of parcel (if detached); rear ½ of dwelling (if attached).
  - SDP required for floodplain overlay district, coastal overlap district, fire ember zone, hillside properties, properties with an existing nonconfirming structure or use, or any ADU which could impact sewer/water connections, traffic flow, or public safety.
- Parking: generally 1 parking spot required, subject to many exceptions. Replacement parking not required unless in Coastal Zone.
- Roof Decks/Balconies: prohibited without an SDP.

The development standards for JADUs are similar, although not as extensive as those for ADUs largely because under State Law, JADUs must be (1) under 500 square feet; (2) fully enclosed within the primary dwelling (*i.e.*, they cannot be detached); and (3) are

not permitted in multi-family zoning districts or dwellings. As a result, issues like size, height, etc have already been determined. However, the proposed Ordinance does contain standards similar to ADU's related to location requirements, sale/rental/use restrictions, and HOA approval requirements. In addition, all JADUs are required to obtain a JADU pemit in addition to any other permits required for construction (such as building permits).

NOTIFICATION AND FOLLOW-UP:

The proposed LCPA and ZTA have been noticed in compliance with the Dana Point Zoning Code Amendment process pursuant to DPZC Section 9.61.080(e)(4). A 1/8th page advertisement was printed in the Dana Point Times for notification of the City Council public hearing on the proposed amendments. If approved and following second reading, the LCPA documents wil be submitted to the California Coastal Commission and ADU ordinance will be submitted to HCD.

STRATEGIC PLAN IMPLEMENTATION:

The project is in keeping with Strategic Goal 5, in that the project promotes a healthy and growing economy reflecting the community's vision and values by guiding development compatible with community expectations through appropriate planning, land use, historical preservation, and development review processes.

FISCAL IMPACT:

If adopted, another public hearing will be conducted at a second reading of the Ordinance to establish a fee to cover costs of processing Accessory Dwelling Unit permits.

ALTERNATIVE ACTIONS:

The City Council could conduct a first reading of the Ordinance with different requirements than those outlined above. In addition, the City Council could introduce other development standards for ADUs consistent with State Law. Or the City Council could not adopt an ADU ordinance, in which case any ADU applications would be subject to the requirements set forth in State Law.

ACTION DOCUMENTS: **PAGE #**

A. Resolution Approving the LCPA and for Submittal to CCC.. 6
B. Ordinance for Proposed ZTA/LCPA Related to Joint Use Parking and Notfiication..10
C. Ordinance for Proposed ZTA related to Accessory Dwelling Units.. 24

ACTION DOCUMENT A

RESOLUTION NO. 21-08-09-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, FOR SUBMISSION OF ZTA19-0002(I) RELATED TO JOINT USE OF PARKING AND PUBLIC NOTIFICATION AS LOCAL COASTAL PROGRAM AMENDMENT LCPA19-0002 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION

Applicant: City of Dana Point
File No.: ZTA19-0002(I)/LCPA19-0002

The City Council of the City of Dana Point does hereby resolve as follows:

WHEREAS, in 1993, the City of Dana Point approved, and the California Coastal Commission certified, the Zoning Ordinance of the City of Dana Point; and

WHEREAS, the City seeks to update the Zoning Ordinance by amending or adding various sections regarding joint use of parking requirements, notifications of public hearing, accessory dwelling units, and junior accessory dwelling unit; and

WHEREAS, the proposal is for a Local Coastal Plan Amendment (the "LCPA") and Zone Text Amendment (the "ZTA") to update by amending various provisions of the Zoning Code; and

WHEREAS, the ZTA and LCPA will be consistent with and will provide for the orderly, systematic and specific implementation of the General Plan; and

WHEREAS, on February 20, 2020, the proposed ZTA and LCPA were made available for public review at City Hall and Library locations within the City of Dana Point, provided to the Coastal Commission Long Beach office, and available on the City of Dana Point's website; and

WHEREAS, on March 9, 2020, the Planning Commission conducted a workshop to discuss and provide direction related to the subject LCPA and ZTA; and

WHEREAS, the Planning Commission held a duly noticed public hearing as prescribed by law on April 13, 2020, to consider said LCPA and ZTA and recommended approval by the City Council 5-0; and

WHEREAS, the City Council did on May 19, 2020, hold a duly noticed public hearing as prescribed by law to consider the Zone Text Amendment and Local Coastal Program Amendment and tabled the item to allow Planning Commission time to consider recommended changes from the California Housing and Community Development (HCD) Department; and

WHEREAS, the Planning Commission held a duly noticed public hearing as prescribed by law on May 27, 2020, to consider said LCPA and ZTA and recommended approval by the City Council 5-0; and

WHEREAS, the City Council did on June 16, 2020, hold a duly noticed public hearing as prescribed by law to consider the Zone Text Amendment and Local Coastal Program Amendment and tabled the item to be re-scheduled at a future date; and

WHEREAS, on October 6, 2020, the item was pulled from the agenda by City Staff so that it could be re-scheduled at a future date; and

WHEREAS, the City Council did on August 9, 2021, held a duly noticed public hearing as prescribed by law to consider the Zone Text Amendment and Local Coastal Program Amendment; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, the City Council considered all factors relating to ZTA19-0002(I) and LCPA19-0002.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Dana Point as follows:

A. That the above recitations are true and correct and incorporated herein by reference;

B. That the proposed action complies with all other applicable requirements of State law and local Ordinances;

C. That the Zone Text Amendment under ZTA19-0002(I) is in the public interest;

D. That the Local Coastal Program Amendment (LCPA19-0002) is consistent with, and will be implemented in full conformity with the Coastal Act;

E. That the City Council has reviewed and considered the Notice of Exemption;

F. The City Council has reviewed the environmental analysis consistent with the California Environmental Quality Act (CEQA) and determined that the project is exempt from CEQA pursuant to Section 15265 of the California Guidelines for Implementation of the California Environmental Quality Act ("CEQA Guidelines"), as CEQA does not apply to a local government's preparation of a local coastal program amendment;

G. That the City Council adopts the following findings:

1. That the public and affected agencies have had ample opportunity to participate in the LCPA process. Proper notice in accordance with the LCP Amendment procedures has been followed.

2. That all policies, objectives, and standards of the LCPA conform to the requirements of the Coastal Act. The amendments to the DPZC are consistent with the Coastal Act policies that encourage coastal access and preservation of coastal and marine resources. That the

DPZC as amended are in conformance with and adequate to carry out the Chapter Three policies of the Coastal Act and that the amendments to the DPZC is in conformance with and adequate to implement the Land Use Plan.

3. That Coastal Act policies concerning specific coastal resources, hazard areas, coastal access concerns, and land use priorities have been applied to determine the kind, locations, and intensity of land and water uses. As a Zone Text Amendment and Local Coastal Program Amendment, no specific development is proposed. Any future development that may occur will be reviewed for compliance with the City's Local Coastal Program and (in addition) for proposed development located within the Commission's appeal area, and the public access policies of the Coastal Act.

4. That the level and pattern of development reflected in the Land Use Plan, Dana Point Zoning Code (DPZC), and Zoning Map are not being modified by the proposed changes. The applicable Policy being amended is consistent with State law, is internally consistent with the General Plan, and does not represent any threat to the public health, safety, or welfare.

5. That a procedure has been established to ensure adequate notice of interested persons and agencies of impending development proposed after certification of the LCPA. Proper notice in accordance with the LCP Amendment procedures has been followed.

6. That the DPZC measures are in place which are in conformance with and adequate to carry out the coastal policies of the Land Use Plan.

H. That the City Council finds the following:

1. The City certifies that with the adoption of these amendments, the City will carry out the Local Coastal Program in a manner fully in conformity with Division 20 of the Public Resources Code as amended, the California Coastal Act of 1976.

2. The City certifies that the Land Use Plan, as amended, is in conformity with and adequate to carry out the Chapter Three policies of the Coastal Act.

3. The City certifies the implementing actions as amended, are in conformity with and adequate to carry out the provisions of the certified Land Use Plan.

4. The Resolution of the City Council specifies that Local Coastal Program Amendment LCPA19-0002 be submitted to the Coastal Commission for certification.

I. That the amendments to the Dana Point Zoning Code are shown in Ordinance 20-XX and incorporated herein by this reference.

J. The City Council approves the Dana Point Zoning Code Amendment ZTA19-0002(I) additional language in its entirety by separate Ordinance.

K. ZTA19-0002(I) and LCPA19-0002 and other remaining applicable sections of the DPZC constitute the LCP for the applicable areas of the City of Dana Point.

The City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 9th day of August, 2021.

____
Jamey Federico, MAYOR

ATTEST:

____
Shayna Sharke
City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF DANA POINT)

I, Shayna Sharke, City Clerk of the City of Dana Point, do hereby certify that the foregoing Resolution No. 21-08-09-XX was duly adopted and passed at a regular meeting of the City Council on the 9th day of August, 2021, by the following roll-call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

____
SHAYNA SHARKE
CITY CLERK

ACTION DOCUMENT B

ORDINANCE NO. 20-XX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING ZONE TEXT AMENDMENT ZTA19-0002(I) TO MODIFY THE ZONING CODE RELATED TO JOINT PARKING PROVISIONS AND PUBLIC NOTIFICATION AND SUBMISSION AS PART OF LOCAL COASTAL PROGRAM AMENDMENT LCPA19-0002 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION.

Applicant: City of Dana Point
File No.: ZTA19-0002(I)/LCPA19-0002

The City Council of the City of Dana Point does hereby ordain as follows:

WHEREAS, in 1993, the City of Dana Point approved, and the California Coastal Commission certified, the Zoning Ordinance of the City of Dana Point; and

WHEREAS, the City seeks to update the Zoning Ordinance by amending the provisions related to joint parking and expanding upon public notification requirements; and

WHEREAS, the ZTA and LCPA will be consistent with and will provide for the orderly, systematic and specific implementation of the General Plan; and

WHEREAS, the Planning Commission held a duly noticed public hearing as prescribed by law on April 13, 2020, to consider said LCPA and ZTA and recommended approval of the proposed amendments to City Council 5-0; and

WHEREAS, the City Council did on May 19, 2020, hold a duly noticed public hearing as prescribed by law to consider the Zone Text Amendment and Local Coastal Program Amendment and tabled the item to allow Planning Commission time to consider recommended changes from the California Housing and Community Development (HCD) Department; and

WHEREAS, the Planning Commission held a duly noticed public hearing as prescribed by law on May 27, 2020, to consider said LCPA and ZTA and recommended approval by the City Council 5-0; and

WHEREAS, the City Council did on June 16, 2020, hold a duly noticed public hearing as prescribed by law to consider the Zone Text Amendment and Local Coastal Program Amendment and tabled the item; and

WHEREAS, on October 6, 2020, the item was pulled from the agenda by City Staff so that it could be re-scheduled at a future date; and

WHEREAS, the City Council did on August 9, 2021, hold a duly noticed public hearing as prescribed by law to consider the Zone Text Amendment and Local Coastal Program Amendment; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, the City Council considered all factors relating to ZTA 19-0002(I), and LCPA 19-0002.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Dana Point as follows:

A. That the above recitations are true and correct and incorporated herein by reference;

B. The revisions to the Zoning Ordinance are attached hereto as Exhibit "A" showing all proposed changes in a strikethrough/underline format, and Exhibit "B" showing a "clean" copy of the proposed modifications and incorporated herein by reference;

C. That the proposed action complies with all other applicable requirements of State law and local Ordinances;

D. That the ZTA19-0002(I) and LCPA19-0002 is in the public interest;

E. The City Council has reviewed the environmental analysis consistent with the California Environmental Quality Act (CEQA) and determined that the project is exempt from CEQA pursuant to Section 15265 of the California Guidelines for Implementation of the California Environmental Quality Act ("CEQA Guidelines"), CEQA does not apply to a local government's preparation of a local coastal program amendment;

F. The proposed amendment to the DPZC is consistent with the General Plan;

G. The City Council adopt Zone Text Amendment ZTA19-0002(I) for the reasons outlined herein including but not limited to: **ensuring that provisions of the DPZC are accurate, relevant, and easily understood by residents and those looking to do business in the City of Dana Point.**

H. That the City Council adopt the following findings:

1. That the public and affected agencies have had ample opportunity to participate in the LCPA and ZTA process, **in that proper notice in accordance with the LCPA procedures of the Dana Point Zoning Code (DPZC) has been followed. Notices were: 1) mailed on February 20, 2020, to notify adjacent agencies that the proposed changes were available for public review, hard copies were made available at City Hall and the Dana Point Library, and was**

put on the City's website; 2) published in the Dana Point Times on April 3, 2020 for the Planning Commission Public Hearing and July 31, 2021 for the City Council Public Hearing; and 3) posted at the Dana Point City Hall, the Dana Point Post Office, the Capistrano Beach Post Office, the Dana Point Library, and on the City's website on April 3, 2020.

2. That all policies, objectives, and standards of the LCPA conform to the requirements of the Coastal Act, including that the Land Use Plan is in conformance with and adequate to carry out the Chapter Three policies of the Coastal Act, **in that the amendments to the Zoning Code are consistent with the Coastal Act policies in that none of the modifications proposed will have impacts to coastal resources or access to coastal resources, and creating requirements to allow for more joint use of parking will promote the establishment of more visitor/resident serving amenities in locations like Town Center, Doheny Village, and Dana Point Harbor. The changes to the Public Hearing process will allow for greater notification of new development in the City of Dana Point.**

3. That Coastal Act policies concerning specific coastal resources, hazard areas, coastal access concerns, and land use priorities have been applied to determine the kind, locations, and intensity of land and water uses, **in that the Local Coastal Plan Amendments and Zone Text Amendments do not impact any land use provisions associated with coastal resources, hazard areas, coastal access concerns, and land use priorities contained in the certified Local Coastal Plan and thereby continues to be consistent with Coastal Act policies.**

4. That the level and pattern of development proposed is reflected in the Land Use Plan, Zoning Code, and Zoning Map, **in that the level and pattern of development as approved in these documents will remain, and the goal is to better utilize joint use of parking facilities provisions in the Zoning Code and provide increased public notification of public hearings.**

5. That a procedure has been established to ensure adequate notice of interested persons and agencies of impending development proposed after certification of the LCPA, **in that the procedures and regulations in Chapter 9.61 "Administration of Zoning", constitute minimum standards for LCPAs and ZTAs within the City's Coastal Zone and applicable notification and process requirements would be applied to subsequent development requests as applicable if these amendments are approved.**

6. That zoning measures are in place which are in conformance with and adequate to carry out the coastal policies of the Land Use Plan, **in that these amendments will promote use of the existing joint use of parking facilities provisions of the Zoning Code to promote new visitor/resident serving uses throughout the community.**

7. The proposed amendment is consistent with the Dana Point General Plan and Local Coastal Program, **in that Land Use Element Policy 1.1, 1.2, 1.3, and 1.6 requires development standards to be developed to address a wide range of development needs and uses for the community. The modifications proposed will increase utilization of joint use of parking facilities and increase public notification of public hearings.**

8. The proposed amendment complies with all other applicable requirements of state law and local ordinances, **in that the intent of the update is to clarify the Zoning Ordinance to better serve the public and does not conflict with any local ordinances.**

I. That the City Council includes the following findings submitting the LCPA to the Coastal Commission:

5. The City certifies that with the adoption of these amendments, the City will carry out the Local Coastal Program in a manner fully in conformity with Division 20 of the Public Resources Code as amended, the California Coastal Act of 1976.

6. The City include the proposed LCPA and ZTA for the Zoning Ordinance Cleanups in its submittal to the Coastal Commission and state that the amendment is to both the land use plan and to the implementing actions.

7. The City certifies that the land use plan is in conformity with and adequate to carry out the Chapter Three policies of the Coastal Act.

8. The City certifies the implementing actions as amended, are in conformity with and adequate to carry out the provisions of the certified Land Use Plan.

9. The Ordinance of the City Council include the Zone Text Amendment, and Local Coastal Program Amendment numbers ZTA19-0002(I) and LCPA19-0002 when submitted to the Coastal Commission.

10. The City finds that the LCPA is exempt from CEQA pursuant to Section 15265 of the CEQA Guidelines. In addition, the introduction and adoption of this ordinance is statutorily exempt under CEQA pursuant to Public Resources Code Section 21080. 17 and Section 15282(h) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, which exempts adoption of an ordinance regarding second units to implement provisions of Sections 65852.2 and 65852. 22 of the

Government Code. Additionally, this ordinance is categorically exempt pursuant to Sections 15303 (New Construction or Conversion of Small Structures) and 15305 (Minor Alterations in Land Use/ Limitations). Similarly, the ministerial approval of accessory dwelling units and junior accessory dwelling units is not a "project" for CEQA purposes, and environmental review is not required prior to approving individual applications.

11. The City certifies that the amendments will be submitted to the Coastal Commission for review and approval as an Amendment to the Local Coastal Program.

J. That the City Council adopt ZTA19-0002, which would amend the Dana Point Local Coastal Program pursuant to LCPA19-0002, as shown in the attached Exhibit “A” and “B”.

K. That the City Council adopts Zone Text Amendment ZTA19-0002(I), which would amend the Dana Point Local Coastal Program pursuant to LCPA19-0002. The City Council approves the amendment for the reasons outlined herein and in the City Council Agenda Report, including but not limited to: updating the Zoning Ordinance as regular maintenance ensuring policy and requirements are relevant, accurate, and clear, thus the proposal is consistent with the General Plan, DPZC, and Coastal Act.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

PASSED, APPROVED, AND ADOPTED this ____ day of ____________, 2021

____
Jamey Federico, MAYOR

ATTEST:

____
SHAYNA SHARKE
City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF DANA POINT)

I, SHAYNA SHARKE, City Clerk of the City of Dana Point, California, do hereby certify that the foregoing Ordinance No. 20-xx was duly introduced at a regular meeting of the City Council on the ____ day of ____________, 2021, and was duly adopted and passed at a regular meeting of the City Council on the ____ day of ____________, 2021, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

____
SHAYNA SHARKE, CITY CLERK

ORDINANCE NO. 21-xx

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF DANA POINT)

AFFIDAVIT OF POSTING
AND PUBLISHING

SHAYNA SHARKE, being first duly sworn, deposes, and says:

That she is the duly appointed and qualified City Clerk of the City of Dana Point;

That in compliance with State Laws of the State of California, ORDINANCE NO. 21-xx, being:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING ZONE TEXT AMENDMENT ZTA19-0002 TO MODIFY THE ZONING CODE RELATED TO JOINT PARKING PROVISIONS AND PUBLIC NOTIFICATION AND SUBMISSION AS PART OF LOCAL COASTAL PROGRAM AMENDMENT LCPA19-0002 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION.

was published in summary in the Dana Point News on the ___ day of __________, 2021, and in further compliance with City Resolution No. XX-XX-XX-XX on the ____ day of ____________, 2021, was caused to be posted in three (3) public places in the City of Dana Point, to wit:

Dana Point City Hall
Capistrano Beach Post Office
Dana Point Post Office

____
SHAYNA SHARKE, CITY CLERK
Dana Point, California

Exhibit "A"

ZONE TEXT AMENDMENT ZTA19-0002(I)

KEY:

ATTACHMENT 1

Normal Text=Existing unmodified language
~~**Bold Strikethrough Text**~~=Proposed language to be removed
Bold Underline Text=Proposed language to be added

Chapter 9.35 Access, Parking and Loading
9.35.060 Parking Requirements

(c)(3) Joint Use of Parking Facilities. Multiple uses on multiple building sites may establish joint use parking facilities within one or more parking areas located within such multiple building sites, provided the following requirements are met:

(A) A detailed joint use parking plan shall be approved by a **Minor** Site Development Permit issued by the Director of Community Development pursuant to Chapter 9.71. The plan shall show and explain all parking facilities, uses and structures that will use the parking and the pedestrian access from the parking facilities to the uses and structures.

(B) The boundary of the parking facilities shall be within ~~**three hundred (300) feet**~~ **¼ mile** of the uses they serve and connected to the site by an ~~**attractive and**~~ adequate pedestrian path or sidewalk to the satisfaction of the Director of Community Development.

(C) Adequate assurance, to the satisfaction of the Director of Community Development, shall be provided to guarantee that required parking will continue to be maintained in compliance with applicable provisions of this Chapter. This assurance shall be recorded in the office of the Orange County Recorder on all properties utilizing the joint use parking facilities.

9.61.050 Notice and Conduct of Public Hearings.

(a) Notice of Hearings for Review of Applications. No less than ~~**ten (10)**~~ **fourteen (14)** calendar days prior to the date of a public hearing on development applications, the Director of Community Development shall give notice including the time and the place at which the application will be heard, the identity of the hearing body or officer, nature of the application (including but not limited to the date of filing of the application, the name of the applicant, the file number assigned to the application, and a description of the development), a brief description of the general procedure of the City of Dana Point

concerning the conduct of hearing and local actions, and the general location of the property under consideration. If the application is for a coastal development permit which is appealable to the Coastal Commission, the notice shall indicate this fact and shall describe the process for local and Coastal Commission appeals, including any local fees required. (14 Cal. Code of Regulations/13565, 13568). The Director shall observe the following notice requirements:

(1) The notice shall be posted in three (3) places in the City of Dana Point designated by Resolution of the City Council.

(2) The notice shall be advertised in a newspaper circulated within the City of Dana Point.

(3) The notice shall be mailed via first class mail to the applicant(s); to the property owner(s) or the property owner's agent(s); to all persons listed as owners of property within five hundred (500) feet of the exterior boundary of the subject property on the notification list required in Section 9.61.040, and if the subject property is located in the Coastal Zone, to the office of the Coastal Commission having jurisdiction over the City of Dana Point and to all persons listed as occupants of dwelling units within one hundred (100) feet of the exterior boundary of the subject property on the notification list required in Section 9.61.040.

Notice shall also be provided to anyone filing a written request and paying the cost for notification and to such other persons whose property might, in the Director's judgment, be affected by the proposed application. For coastal development permit applications, the Director shall also provide notice by first class mail free of charge to all persons who have requested to be on the mailing list for that development project or the mailing list for all coastal decisions within the City of Dana Point.

(4) For all non-residential projects requiring a public hearing, at least fourteen (14) calendar days prior to the date of public hearing, the applicant shall post at the project site three (3) notices of public hearing in conspicuous places, with at least two (2) of the notices located adjacent and facing the public right-of-way so that they may be visible to both pedestrians and vehicular traffic. The required public notices will be provided by the Planning Division to the applicant, and the applicant shall provide visual evidence and a signed affidavit of posting.

~~(4)~~**(5)** If the Director finds that the posting and mailing of notices prescribed in this Section may not give sufficient notice to the affected property owners, then additional notices may be posted at locations which are best suited to reach the attention of, and properly inform those persons who may be affected.

~~(5)~~**(6)** When the proposed entitlement affects more than 1,000 (one thousand) property owners, the required notice may be provided by placing a 1/8 page display advertisement in a newspaper circulated within the City of Dana Point. Such notice shall be considered an acceptable substitute for the published notice required in subsection (2) and the mailed notice required in subsection (3). However, in the case of coastal development permit applications, newspaper notice shall not substitute for the mailed notice required in subsection (3) above.

~~(6)~~**(7)** The notice shall be sent to public officers, departments, bureaus, or agencies which, in the determination of the Director of Community Development, could be affected by the application or otherwise require noticing.

~~(7)~~**(8)** When a Negative Declaration is recommended for adoption pursuant to the California Environmental Quality Act (CEQA), notice of intent to adopt a Negative Declaration shall be published no less than twenty-one (21) days prior to the hearing date, or thirty (30) days prior to the hearing date for applications which require circulation of the Negative Declaration to the State Clearinghouse.

~~(8)~~**(9)** Notice for Timeshare Properties.

(A) If a timeshare property falls within the one hundred (100) foot occupant-notification radius for Coastal Development Permits described in (8) above, all shareholders shall be notified as described in subsection (3) above.

(B) If a timeshare property falls outside the one hundred (100) foot occupant-notification radius described in subsection (8) above, but within the five hundred (500) foot property owner-notification radius described in subsection (3) above, notices shall be sent to the property manager/sales agent for the timeshare, the shareholders association for the timeshare where one exists, and one notice to each physical unit in the timeshare, addressed to "Occupant."

(b) Notice for General Plan Amendments. Prior to any amendment to the General Plan, the Community Development Department shall forward the proposed action to the following entities:

(1) Any City or County within or abutting the area covered by the proposal, and any special district which may be significantly affected by the proposed action.

(2) Any elementary, high school, or unified school district within the area covered by the proposed action.

(3) The Local Agency Formation Commission.

(4) Any area-wide planning agency whose operations may be significantly affected by the proposed action.

(5) Any Federal Agency if its operations or land within its jurisdiction may be significantly affected by the proposed action.

(c) Notice of Public Hearings for Revocations. The Director of Community Development, in giving notice of a public hearing to revoke a Conditional Use Permit, Variance, or Site Development Permit, Coastal Development Permit, or other entitlement, shall observe the noticing requirements set forth as follows:

(1) Notification shall be provided as prescribed in Section 9.61.050; and

(2) The Director shall serve the owner of the premises involved written notice of such hearing, by registered or certified mail, return receipt requested and by posting a copy of said notice in a conspicuous location on the property.

(d) Continuances. If, for any reason, testimony on a case cannot be heard or completed at the time set for such hearing, the Planning Commission may continue or extend the hearing to another time. Before adjournment or recess, the Planning

Commission chairman shall publicly announce the time and place at which the hearing will be continued.

(e) Failure To Receive Notice. The failure of any person or entity to receive notice required pursuant to this Section shall not constitute grounds to invalidate the proceedings or actions of the City in regards to the item for which the notice was given.

EXHIBIT "B"

Chapter 9.35 Access, Parking and Loading
9.35.060 Parking Requirements

(c)(3) Joint Use of Parking Facilities. Multiple uses on multiple building sites may establish joint use parking facilities within one or more parking areas located within such multiple building sites, provided the following requirements are met:

(A) A detailed joint use parking plan shall be approved by a Minor Site Development Permit issued by the Director of Community Development pursuant to Chapter 9.71. The plan shall show and explain all parking facilities, uses and structures that will use the parking and the pedestrian access from the parking facilities to the uses and structures.

(B) The boundary of the parking facilities shall be within ¼ mile of the uses they serve and connected to the site by an adequate pedestrian path or sidewalk to the satisfaction of the Director of Community Development.

(C) Adequate assurance, to the satisfaction of the Director of Community Development, shall be provided to guarantee that required parking will continue to be maintained in compliance with applicable provisions of this Chapter. This assurance shall be recorded in the office of the Orange County Recorder on all properties utilizing the joint use parking facilities.

9.61.050 Notice and Conduct of Public Hearings.

(a) Notice of Hearings for Review of Applications. No less than fourteen (14) calendar days prior to the date of a public hearing on development applications, the Director of Community Development shall give notice including the time and the place at which the application will be heard, the identity of the hearing body or officer, nature of the application (including but not limited to the date of filing of the application, the name of the applicant, the file number assigned to the application, and a description of the development), a brief description of the general procedure of the City of Dana Point concerning the conduct of hearing and local actions, and the general location of the property under consideration. If the application is for a coastal development permit which is appealable to the Coastal Commission, the notice shall indicate this fact and shall describe the process for local and Coastal Commission appeals, including any local fees required. (14 Cal. Code of Regulations/13565, 13568). The Director shall observe the following notice requirements:

(1) The notice shall be posted in three (3) places in the City of Dana Point designated by Resolution of the City Council.

(2) The notice shall be advertised in a newspaper circulated within the City of Dana Point.

(3) The notice shall be mailed via first class mail to the applicant(s); to the property owner(s) or the property owner's agent(s); to all persons listed as owners of property within five hundred (500) feet of the exterior boundary of the subject property on the notification list required in Section 9.61.040, and if the subject

property is located in the Coastal Zone, to the office of the Coastal Commission having jurisdiction over the City of Dana Point and to all persons listed as occupants of dwelling units within one hundred (100) feet of the exterior boundary of the subject property on the notification list required in Section 9.61.040.

Notice shall also be provided to anyone filing a written request and paying the cost for notification and to such other persons whose property might, in the Director's judgment, be affected by the proposed application. For coastal development permit applications, the Director shall also provide notice by first class mail free of charge to all persons who have requested to be on the mailing list for that development project or the mailing list for all coastal decisions within the City of Dana Point.

(4) For all non-residential projects requiring a public hearing, at least fourteen (14) calendar days prior to the date of public hearing, the applicant shall post at the project site three (3) notices of public hearing in conspicuous places, with at least two (2) of the notices located adjacent and facing the public right-of-way so that they may be visible to both pedestrians and vehicular traffic. The required public notices will be provided by the Planning Division to the applicant, and the applicant shall provide visual evidence and a signed affidavit of posting.

(5) If the Director finds that the posting and mailing of notices prescribed in this Section may not give sufficient notice to the affected property owners, then additional notices may be posted at locations which are best suited to reach the attention of, and properly inform those persons who may be affected.

(6) When the proposed entitlement affects more than 1,000 (one thousand) property owners, the required notice may be provided by placing a 1/8 page display advertisement in a newspaper circulated within the City of Dana Point. Such notice shall be considered an acceptable substitute for the published notice required in subsection (2) and the mailed notice required in subsection (3). However, in the case of coastal development permit applications, newspaper notice shall not substitute for the mailed notice required in subsection (3) above.

(7) The notice shall be sent to public officers, departments, bureaus, or agencies which, in the determination of the Director of Community Development, could be affected by the application or otherwise require noticing.

(8) When a Negative Declaration is recommended for adoption pursuant to the California Environmental Quality Act (CEQA), notice of intent to adopt a Negative Declaration shall be published no less than twenty-one (21) days prior to the hearing date, or thirty (30) days prior to the hearing date for applications which require circulation of the Negative Declaration to the State Clearinghouse.

(9) Notice for Timeshare Properties.

(A) If a timeshare property falls within the one hundred (100) foot occupant-notification radius for Coastal Development Permits described in (8) above, all shareholders shall be notified as described in subsection (3) above.

(B) If a timeshare property falls outside the one hundred (100) foot occupant-notification radius described in subsection (8) above, but within the five

hundred (500) foot property owner-notification radius described in subsection (3) above, notices shall be sent to the property manager/sales agent for the timeshare, the shareholders association for the timeshare where one exists, and one notice to each physical unit in the timeshare, addressed to "Occupant."

(b) Notice for General Plan Amendments. Prior to any amendment to the General Plan, the Community Development Department shall forward the proposed action to the following entities:

(1) Any City or County within or abutting the area covered by the proposal, and any special district which may be significantly affected by the proposed action.

(2) Any elementary, high school, or unified school district within the area covered by the proposed action.

(3) The Local Agency Formation Commission.

(4) Any area-wide planning agency whose operations may be significantly affected by the proposed action.

(5) Any Federal Agency if its operations or land within its jurisdiction may be significantly affected by the proposed action.

(c) Notice of Public Hearings for Revocations. The Director of Community Development, in giving notice of a public hearing to revoke a Conditional Use Permit, Variance, or Site Development Permit, Coastal Development Permit, or other entitlement, shall observe the noticing requirements set forth as follows:

(1) Notification shall be provided as prescribed in Section 9.61.050; and

(2) The Director shall serve the owner of the premises involved written notice of such hearing, by registered or certified mail, return receipt requested and by posting a copy of said notice in a conspicuous location on the property.

(d) Continuances. If, for any reason, testimony on a case cannot be heard or completed at the time set for such hearing, the Planning Commission may continue or extend the hearing to another time. Before adjournment or recess, the Planning Commission chairman shall publicly announce the time and place at which the hearing will be continued.

(e) Failure To Receive Notice. The failure of any person or entity to receive notice required pursuant to this Section shall not constitute grounds to invalidate the proceedings or actions of the City in regards to the item for which the notice was given.

ACTION DOCUMENT C

Ordinance No. 21-XX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING ZONE TEXT AMENDMENT ZTA19-0002(II) TO MODIFY THE ZONING CODE RELATED TO ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS.

WHEREAS, the State of California has declared that a severe housing crisis exists in the State of California with the demand for housing greatly exceeding the supply; and

WHEREAS, Accessory Dwelling Units ("ADUs") and Junior Accessory Dwelling Units ("JADUs") provide potentially affordable housing opportunities in a manner that can be compatible with existing single and multi-family neighborhoods, so long as the ADU is constructed in a manner that complies with certain development standards; and

WHEREAS, on October 9, 2019, Governor Newsom signed into law several bills intended to increase the supply of affordable housing by facilitating the construction of ADUs and JADUs, including AB 68, AB 881, and SB 13 (the "State ADU Laws"); and

WHEREAS, the State ADU Laws amended Government Code section 65852.2 and 65852.22, and became effective on January 1, 2020; and

WHEREAS, since the City's existing ADU ordinance did not comply with the revisions to Government Code Sections 65852.2 and 65852.22, the City's ordinance has been deemed null and void effective the same date (excepting the City's ADU regulations contained in its Local Coastal Program ("LCP") impacting the Coastal Zone which remain unaffected at this time and will remain effective until such time as the City's LCP is duly amended); and

WHEREAS, as amended, Government Code sections 65852.2 and 65852.22 authorizes cities to act by ordinance to provide for the creation and regulation of ADUs and JADUs; and

WHEREAS, the City of Dana Point (the "City") desires to amend its local regulatory scheme relating to the construction of ADUs and JADUs to comply with the revised provisions of Government Code sections 65852.2 and 65852.22; and

WHEREAS, ADUs and JADUs potentially offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character; and

WHEREAS, adopting an ordinance consistent with Government Code Sections 65852.2 and 65852.22 ensures that the character of the city is preserved to the maximum extent possible and that the City's regulation regarding ADUs and JADUs continues to promote the health, safety, and welfare of the community; and

WHEREAS, as permitted by Government Code Section 65852.2(a)(1)(A), the City may "[d]esignate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety."; and

WHEREAS, the City finds that the development of ADUs in areas in the city located in the City's Flood Plain Overlay District, Coastal Overlay District, on steep hillside

properties, on parcels with existing nonconforming structures or uses, or within the City's Fire Ember Zones without obtaining a Site Development Permit could impact public safety due to the unique development constraints applicable to those properties that have historically been imposed by the City (and in some cases the California Coastal Commission) in order to prevent and/or mitigate concerns related to flood hazards, erosion, drainage, hillside stability, wildfires, and/or development prior to the City's incorporation which is inconsistent with the City's Zoning Code; and

WHEREAS, an amendment to the City's LCP is also underway to assess how best to amend ADU regulations in the Coastal Zone in a manner that complies with both State ADU laws and the Coastal Act. The subject Zoning Code Amendment shall not become effective for projects located in the coastal zone unless and until approval of an LCP amendment by the California Coastal Commission and adoption, including any modifications suggested by the California Coastal Commission, by resolution and/or ordinance of the City Council of the City of Dana Point.

WHEREAS, three public meeting(s)/hearing(s) were held by the Planning Commission on March 9, April 13, and May 27, 2020, in the Council Chambers located at 33282 Golden Lantern, Dana Point, California. A notice of time, place and purpose of the public hearing was given in accordance with California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act"). Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing.

WHEREAS, following the public hearing on April 13, 2020, the Planning Commission adopted Resolution No. 20-04-13-08 by a unanimous vote recommending to the City Council that it approve Zoning Code Amendment No. LCPA19-0002/ZTA19-0002. The Planning Commission re-affirmed their recommendation at the public hearing on May 27, 2020.

WHEREAS, public hearing was held on August 9, 2020, in the Council Chambers located at 33282 Golden Lantern, Dana Point. A notice of time, place and purpose of the public hearing was given in accordance with the Dana Point Municipal Code. Evidence, both written and oral, was presented to, and considered by, the City Council.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DANA POINT DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: The foregoing recitals are true and correct and incorporated herein as if set forth in full.

SECTION 2. Sections 9.09.020 is hereby amended as follows

The terms "second dwelling unit" and "granny flat" shall be eliminated from the alphabetical list of allowable uses.

The term "accessory dwelling unit" and "junior accessory dwelling unit" shall be added to the alphabetical list, with the uses in each zoning district designated as follows:

LAND USES	RSF 2	RSF 3	RSF 4	RSF 7	RSF 8	RSF 12
Accessory Dwelling Unit	P*	P*	P*	P*	P*	P*
Junior Accessory Dwelling Unit	P*	P*	P*	P*	P*	P*

LAND USES	RBR 12	RBRD 18	RD 14	RSF 22

Accessory Dwelling Unit	P*	P*	P*	P*
Junior Accessory Dwelling Unit	P*	X	X	P*

LAND USES	RMF 7	RMF 14	RMF 22	RMF 30
Accessory Dwelling Unit	P*	P*	P*	P*
Junior Accessory Dwelling Unit	X	X	X	X

SECTION 3: Appendix A, the Master Land Use Matrix, shall hereby be amended as follows:
The terms "second dwelling unit" and "granny flat" shall be eliminated from the alphabetical list of allowable uses.
The terms "accessory dwelling unit" and "junior accessory dwelling unit" shall be added to the alphabetical list, with the designated use in each zoning district designated as follows:

	RSF 2	RSF 3	RSF 4	RSF 7	RMF 7	RSF 8	RSF 12
Accessory Dwelling Unit	P*	P*	P*	P*	P*	P*	P*
Junior Accessory Dwelling Unit	P*	P*	P*	P*	X	P*	P*

	RBR 12	RMF 12	RSF 14	RD 14	RMF 14	RBRD 18
Accessory Dwelling Unit	P*	P*	P*	P*	P*	P*
Junior Accessory Dwelling Unit	P*	X	P*	X	X	X

	RSF 22	RMF 22	RMF 30	NC	CC/P	CC/V
Accessory Dwelling Unit	P*	P*	P*	X	X	X
Junior Accessory Dwelling Unit	P*	X	X	X	X	X

SECTION 4: Section 9.75.270 is hereby amended as follows:
The terms "second dwelling unit" and "granny flat" shall be eliminated from the alphabetical list of allowable uses.
The term "accessory dwelling unit" shall be added to the alphabetical list of definitions of use, as follows:
"Accessory Dwelling Unit shall mean 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. An accessory dwelling unit also

includes the following: (A) An efficiency unit, and (B) A manufactured home, as defined in Section 18007 of the Health and Safety Code."

The term "junior accessory dwelling unit" shall be added to the alphabetical list of definitions as follows:

"Junior accessory dwelling unit shall mean a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure."

SECTION 5: Section 9.07.210 of the Dana Point Zoning Code is hereby repealed and replaced in its entirety as follows:

9.07.210 Accessory Dwelling Units.

A **Purpose and Intent**. The purpose of this Section is to facilitate the increased production of Accessory Dwelling Units ("ADUs") and provide for reasonable regulations for their development on lots developed or proposed to be developed with residential dwelling(s), in accordance with California Government Code Section 65852.2, or any successor statute. Formerly referred to as "second dwelling units" or "granny flats" in the City of Dana Point Municipal Code, such ADUs can contribute needed housing to the community's housing stock and promote housing opportunities for persons from a range of socioeconomic backgrounds who wish to reside in the city of Dana Point. In addition, the regulations in this ordinance are intended to promote the goals and policies of the City's General Plan, Local Coastal Program, and comply with requirements codified in the State Planning and Zoning Law related to Accessory Dwelling Units in residential areas, including Government Code Sections 65852.2 and 65852.22.

B **Definitions.**

1. An "attached Accessory Dwelling Unit" shall mean and refer to an accessory dwelling unit, as that term is defined in Government Code 65852.2(j)(1) that is connected via a permanent wall, ceiling, or floor to either a primary dwelling or an accessory structure located on the same lot. Attached Accessory Dwelling Units do not include those ADUs which are attached to a primary structure via patio structure, overhang, or breezeway.

2. A "detached Accessory Dwelling Unit" shall mean and refer to an accessory dwelling unit, as that term is defined in Government Code 65852.2(j)(1) that is not connected via a wall, ceiling, or floor to either a primary dwelling or an accessory structure located on the same lot.

3. The term "multi-family dwelling structure" means a structure with two or more attached dwelling units on a single lot. Multiple detached single-unit dwellings on the same lot shall not be considered "multi-family dwelling structures" for the purposes of this Section, and instead shall be deemed to be single family dwellings. Detached non-residential accessory structures, such as leasing offices, club houses, and other similar structures shall not be considered "multi-family dwelling structures."

4. The term "living area" shall mean the interior habitable area of the primary dwelling unit, including basements and attics, but not including garages or accessory spaces, consistent with Government Code 65852.2(j)(4).

5. The term "total floor area" shall mean the total floor area of the ADU, inclusive of all habitable areas and non-habitable areas of the structure, including but not limited to stairways, hallways, basements, attics, garages, storage areas, restrooms, and any other accessory spaces, consistent with Dana Point Zoning Code section 9.75.060.

C <u>Applicability</u>.

1. <u>New Accessory Dwelling Units</u>. Any construction, establishment, alteration, enlargement, or modification of an Accessory Dwelling Unit shall comply with the requirements of this Section, the underlying development standards in the zoning district in which the lot is located, as well as any applicable overlay district, and the City's Building and Construction Codes as set forth in Title 8.

2. <u>Legal Nonconforming Accessory Dwelling Units</u>. All Accessory Dwelling Units which were legal at the time of their creation but which do not conform to this Section are deemed legal nonconforming and shall be subject to the provisions of Chapter 9.63 (Nonconforming Uses and Structures).

3. <u>Existing Illegal Accessory Dwelling Units</u>. Subject to Government Code Section 65852.2(e)(2) and (n), the provisions of this section shall in no way validate any existing illegal Accessory Dwelling Unit. An application may be made pursuant to this Section to convert an illegal Accessory Dwelling Unit to a legal conforming Accessory Dwelling Unit, and shall be subject to the same standards and requirements as for a newly proposed Accessory Dwelling Unit.

4. <u>Designation of Existing Primary Dwelling Unit to Accessory Dwelling Unit</u>. An existing residential structure may be designated as an Accessory Dwelling Unit at such time as a new primary dwelling unit is constructed, provided the existing structure conforms to all current development standards of this Section and approval of an Accessory Dwelling Unit Permit is obtained.

D <u>Accessory Dwelling Unit Permit Required</u>. There are three types of ADUs identified in this Section: those subject to mandatory approval, those subject to non-mandatory approval, and ADUs that are subject to discretionary approval via a Site Development Permit. All three types of ADUs require an ADU Permit, as set forth below.

1. <u>Permits</u>. With the exception of legal non-conforming Accessory Dwelling Units described in Section 9.07.210 (B)(2) above, all Accessory Dwelling Units require an Accessory Dwelling Unit Permit. The applicant shall also obtain a building permit as required by the City's Building and Construction Codes set forth in Title 8 and record a deed restriction as provided in Section 9.07.210(F)(3).

2. <u>Application Processing</u>. An application for an Accessory Dwelling Unit Permit shall be made on forms provided by the Department of Community Development and be submitted with any applicable fees. The application form shall specify all information needed in order for the ADU Permit application to be deemed complete. The application fee shall be established by resolution of the City Council. An application for an ADU Permit will be

deemed complete once all information required by the application form has been submitted to the Community Development Department, including all required fees, and all changes required to building permit plans submitted to the Community Development Department have been made to the satisfaction of the Director. The applicant shall be notified in writing once the Director determines the application is complete.

3. Review.

   a. The Community Development Director or designee will review and approve complete applications for Accessory Dwelling Unit Permits for compliance with the requirements of this section. The Accessory Dwelling Unit Permit application shall be considered ministerially without any discretionary review or a public hearing.

   b. The Community Development Director or designee shall either deny an application within 60 days after it is deemed complete, or approve it within the same time period if the proposed Accessory Dwelling Unit complies with the requirements of this Section, the underlying development standards in the zoning district in which it is located, as well as any applicable overlay district. Prior to issuance of any building permits relating to the Accessory Dwelling Unit, the applicant shall record the deed restriction described in Section 9.07.210(F)(3).

   c. Except as otherwise provided in this chapter and subject to Government Code Section 65852.2(f), the construction of an Accessory Dwelling Unit shall be subject to any applicable fees adopted pursuant to the requirements of Government Code, Title 7, Division 1, Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

4. Permit Revocation.

   a. Subject to Government Code Section 65852.2(n), an Accessory Dwelling Unit Permit may be revoked if the Accessory Dwelling Unit violates one or more requirements of this Section or any other applicable provisions of the Dana Point Municipal Code.

   b. The Building Official or designee shall provide written notice of the decision to revoke the Accessory Dwelling Unit Permit to the property owner by certified mail with return receipt requested.

   c. Within 15 days of the deposit of the notice of the decision to revoke the Accessory Dwelling Unit Permit in the United States mail, the property owner and/or occupant may request a hearing before the Community Development Director. If the City receives a timely request for a hearing in accordance with this subsection, the decision to revoke shall be stayed until the hearing is concluded and the Director has made his or her determination. If the City does not receive a request for a hearing within 15 days, the revocation of the Accessory Dwelling Unit Permit shall be final.

   d. If, after a hearing, the Director of Community Development affirms the revocation of the Accessory Dwelling Unit Permit, the property owner and/or occupant may appeal the Director's decision to the Planning Commission in accordance with Chapter 9.61.110. If the City receives a timely request for a hearing in accordance with Chapter 9.61.110, the decision to revoke shall be stayed until the hearing is concluded and the Planning Commission has made its determination.

e. If, after a hearing, the Planning Commission affirms the revocation of the Accessory Dwelling Unit Permit, the property owner and/or occupant may appeal the Planning Commission's decision to the City Council in accordance with Chapter 9.61.110. If not timely appealed the decision of the Planning Commission shall be final. If the City receives a timely request for a hearing in accordance with Chapter 9.61.110, the decision to revoke shall be stayed until the hearing is concluded and the City Council has made its determination. Such decision by the Council shall be final.

f. If an Accessory Dwelling Unit Permit is revoked, all provisions of law, including specifically those set forth in the Municipal Code, applicable when either a building permit or a Use Permit is revoked shall apply. In addition, the property owner shall, within 60 days, obtain all necessary permits and remove the kitchen facilities from the unit space, and shall not rent the unit except together with the primary residence to a single household.

E **Development Standards Applicable to ADUs Subject to Mandatory Approval**. Pursuant to Government Code section 65852.2, subdivision (e), ADUs that meet the following development standards shall qualify for mandatory approval of an ADU Permit Application. Only one mandatory ADU shall be permitted per lot.

1. **ADUs Attached to Single Family Dwelling or Accessory Structure (Including a Detached Garage**). An applicant may construct one (1) attached ADU or one (1) attached JADU per lot if the proposed ADU/JADU complies with all of the following development standards:

   a. The ADU or JADU must be wholly contained within the proposed space of a proposed single family dwelling, or within the existing space of an existing single family dwelling or an existing accessory structure.

   b. An accessory structure converted into an ADU may be expanded up to 150 square feet for ingress/egress.

   c. The ADU or JADU must have exterior access separate from the primary dwelling.

   d. The ADU or JADU must contain side and rear yard setbacks sufficient for fire and safety.

   e. The JADU must comply with all of the requirements of Government Code section 65852.22.

   f. The ADU or JADU shall be subject to the sale, rental, and deed restriction requirements contained in Section 9.07.210(F)(2)-(3) and 9.07.215(D)(1)-(2).

   g. All ADUs and JADUs must meet the requirements of all Uniform Codes, including but not limited to the California Building Code and the California Fire Code, as such codes have been adopted and amended by Title 8 of the City of Dana Point Municipal Code. In addition, ADUs and JADUs that are attached to the primary dwelling shall contain a fire wall sufficient for fire retention.

h. The total floor area of an attached ADU shall be limited to 50% of living area of the primary dwelling.

i. The maximum height of an ADU attached to an accessory structure shall be limited to 16 feet. The maximum height for a JADU or ADU attached to a primary dwelling shall be the height of the underlying zoning district.

j. All attached ADUs and JADUs shall be approved by the applicant's homeowner's association, if applicable, prior to an application being submitted to the City.

k. An attached ADU or JADU shall be subject to the location requirements set forth in Section 9.07.210(F)(1) below.

2. **Detached ADU on Single Family Dwelling Lot**. An applicant shall be allowed to construct one (1) detached ADU per lot if all of the following development standards are satisfied:

   a. All portions of the detached ADU, including amenities such as HVAC equipment, staircases, and patio covers, shall be setback at least four (4) feet from the side and rear yard property lines.

   b. A detached ADU constructed pursuant to this Section may be constructed in combination with an attached JADU that meets the requirements of Government Code section 65852.22.

   c. The total floor area of the detached ADU shall not exceed 800 square feet.

   d. The maximum height of the detached ADU shall not exceed 16 feet.

   e. The ADU shall be subject to the sale, rental, and deed restriction requirements contained in Section 9.07.210(F)(2)-(3).

   f. All ADUs must meet the requirements of all Uniform Codes, including but not limited to the California Building Code and the California Fire Code, as such codes have been adopted and amended by Title 8 of the City of Dana Point Municipal Code.

   g. The detached ADU shall maintain a ten (10) foot separation from the primary dwelling and any accessory structure(s) located on the property.

   h. All detached ADUs shall be approved by the applicant's homeowner's association, if applicable, prior to an application being submitted to the City.

   i. An attached ADU or JADU shall be subject to the location requirements set forth in Section 9.07.210(F)(1) below.

3. **Attached ADUs on Lots Containing Existing Multi-Family Dwelling(s)**: An applicant shall be allowed to construct one (1) attached ADU within each multi-family dwelling structure, if it meets all of the following development standards:

a. The ADU must be contained within portions of existing multi-family dwellings that are not used as livable space, such as storage rooms, boiler rooms, passageways, attics, basements, or garages.

b. All ADUs must meet the requirements of all Uniform Codes, including but not limited to the California Building Code and the California Fire Code, as such codes have been adopted and amended by Title 8 of the City of Dana Point Municipal Code. In addition, ADUs that are attached to the primary dwelling shall contain a fire wall sufficient for fire retention.

c. No JADU may be constructed with a multi-family dwelling.

d. A certificate of occupancy had been issued for the multi-family dwelling on or before January 1, 2020.

e. Notwithstanding the limitation to one (1) ADU as set forth in this Section E(3), an applicant may be permitted to construct an additional number of ADUs within an existing multi-family dwelling, equivalent to not more than 25% of the existing multi-family dwelling units, upon the application for and issuance of a Site Development Permit pursuant to Section 9.07.210(H).

f. The ADU shall be subject to the sale, rental, and deed restriction requirements contained in Section 9.07.210(F)(2)-(3). .

g. The total floor area of an ADU shall be limited to 50% of the average living area of existing Multi-Family dwelling units.

h. All ADUs shall be approved by the applicant's homeowner's association, if applicable, prior to an application being submitted to the City.

i. The ADU shall be subject to the location requirements set forth in Section 9.07.210(F)(1) below.

4. **Detached ADUs on Existing Multi-Family Dwelling Lots**: No detached ADU shall be constructed upon a lot containing an existing Multi-Family dwelling. Notwithstanding the forgoing, an applicant may construct up to two (2) detached ADUs for each lot containing an existing Multi-Family dwelling, upon the application for and issuance of a Site Development Permit pursuant to Section 9.07.210(H) if all the following development standards are met:

a. The maximum height of the detached ADU(s) shall not exceed 16 feet.

b. All portions of the detached ADU, including ADU amenities such as HVAC equipment, staircases, and patio covers, shall be setback at least four (4) feet from the side and rear yard property lines.

c. A certificate of occupancy had been issued for the multi-family dwelling on or before January 1, 2020.

d. No JADU may be constructed with a multi-family dwelling.

e. The total floor area of the detached ADU shall not exceed 1200 square feet.

f. The detached ADU shall maintain a ten (10) foot separation from the primary dwelling and any accessory structure(s) located on the property.

g. All detached ADUs shall be approved by the applicant's homeowner's association, if applicable, prior to an application being submitted to the City.

h. The ADU shall be subject to the sale, rental, and deed restriction requirements contained in Section 9.07.210(F)(2)-(3).

i. The ADU shall be subject to the location requirements set forth in Section 9.07.210(F)(1) below.

F **Development Standards for ADUs Not Subject to Mandatory Approval**. The development standards set forth below shall apply to all non-mandatory ADUs. For any development standard not explicitly identified below, the requirements of the underlying zoning district shall apply, unless superseded by State Law.

1. **Zoning and Location Requirements**. Accessory Dwelling Units shall be allowed in all zoning districts in the City that allow single family or multi-family dwelling residential uses, in accordance with the permit and development standards described in this Section, and subject to the exceptions set forth in subsections (a) through (f) below.

a. **Flood Plain Overlay District**. Due to the public safety concerns associated with water, erosion, and flood hazards, as well as the proliferation of existing non-conforming structures within the City's Flood Plain Overlay Districts, no attached or detached ADU shall be located in the City's Flood Plain Overlay District without obtaining a Site Development Permit pursuant to Section 9.07.210(H).

b. **Coastal Overlay District**. Pursuant to Government Code 65852.2(l), nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resource Code). As such, in accordance with the City's Certified Local Coastal Program, no attached or detached ADU shall be developed within the City's Coastal Overlay District without obtaining a Coastal Development Permit and Conditional Use Permit and otherwise complying with all provisions of the City's Local Coastal Program related to ADUs.

c. **Hillside Properties**. Due to public safety concerns with hillside stability, small, narrow steep lots, drainage, and related traffic flow conditions, no attached or detached ADUs shall be constructed on any lot which contains a hillside condition, which shall mean a lot with a topographic slope percentage, as defined in Section 9.75.190 of this Dana Point Zoning Code, either front to rear or side to side, of twenty (20) percent or greater, calculated in accordance with Section 9.05.110(a)(4)(A), without obtaining a Site Development Permit pursuant to Section 9.07.210(H).

d. **Existing Non-Conforming Structure or Use**. No attached or detached ADU shall be constructed on any lot which has an existing development constructed upon it, which is non-conforming with respect to the City's current use or development standards without obtaining a Site Development Permit pursuant to Section 9.07.210(H).

e. **Fire Ember Zone**. No attached or detached ADU shall be constructed on any lot located within the City's Fire Ember Zone without obtaining a Site Development Permit pursuant to Section 9.07.210(H).

f. In addition to the foregoing, the City shall review each Accessory Dwelling Unit Permit Application for any other issues related to adequacy of water or sewer services, and/or the impact of the proposed ADU on traffic flow, or public safety. In the event that the City identifies a potential issue with respect to adequate water/sewer, traffic flow, or public safety, the City may deny the Application and/or require the applicant to submit a Site Development Permit application pursuant to Section 9.07.210(H).

2. **Sale, Rental, and Occupancy of Units**. The Accessory Dwelling Unit shall not be sold separately from the primary dwelling unit, and shall not be rented for less than thirty (30) days. Beginning January 1, 2025, a natural person with legal or equitable title to the lot must reside in either the primary dwelling unit or the Accessory Dwelling Unit as the person's legal domicile and permanent residence.

3. **Deed Restriction**. A Deed Restriction prepared by the City shall be recorded on the subject property prior to issuance of the ADU Permit stating that (a) the ADU is subject to the requirements of this Section, (b) the ADU shall not sold separately from the primary dwelling unit, (c) the ADU shall not be rented for less than 30 days, (d) beginning January 1, 2025, a natural person with legal or equitable title to the lot must reside in either the primary dwelling unit or the Accessory Dwelling Unit as the person's legal domicile and permanent residence, and (e) the deed restriction runs with the land and each provision therein may be enforced against future owners of the property.

4. **Maximum Number of Units Allowed**.

a. Single Family Residential Zoning Districts. In single family residential zoning districts where ADUs are permitted, an applicant shall be allowed to construct one (1) detached or attached ADU per lot, subject to the provisions contained in this Section. Pursuant to Government Code 65852.2, in addition to the one (1) attached or detached ADU allowed in this this Section, an applicant may also construct one (1) Junior Accessory Dwelling Unit so long as it complies with the requirements of Section 9.07.215.

b. Multi-Family and Mixed-Use Zoning Districts with Existing Multi-Family Dwelling Structures. In multi-family or mixed use zoning districts where ADUs are permitted, an applicant shall be allowed to construct one (1) attached ADU contained within portions of existing multi-family dwellings, that are not used as livable space, such as storage rooms, boiler rooms, passageways, attics, basements, or garages per lot zoned for multi-family or mixed use development, subject to the provisions contained in this Section.

5. **Required Setbacks**. All attached and detached ADUs shall strictly comply with at least a four (4) foot side setback and at least a four (4) foot rear yard setback. All ADUs must also strictly comply with the front yard setback requirement of the underlying zoning district in which it is located. No portion of an attached or detached ADU, including but not limited to HVAC equipment, staircases, and patio covers, shall project into the required rear, side, or front yard setback. No setback requirement shall be required for a legally existing detached accessory structure, which is converted into an ADU. However, the converted

ADU must comply with all of the other requirements of this Section, including the size, height, building separation, parking and permitting requirements set forth herein.

6. **Maximum Height/Stories**.

    a. All detached ADUs, and all ADUs attached to accessory structures shall be subject to a height limitation of sixteen (16) feet, and shall be limited to one story.

    b. An ADU that is attached to a primary dwelling may be constructed above the dwelling's attached garage, so long as the existing dwelling contains two stories and complies with all development standards applicable in underlying zoning district in which it is located, including but not limited to height.

7. **Building Separation Requirements**. All ADUs shall comply with the City's building separation requirements as set forth in Chapters 9.09 and 9.13.

8. **ADU Size Requirements**.

    a. Subject to Section 9.07.210(F)(8)(b) below, if an attached ADU is proposed as part of an existing or proposed primary dwelling, the total floor area of the ADU shall not exceed fifty percent (50%) of the living area of the existing primary residence.

    b. For all ADUs, the total floor area shall not exceed:

        i. 850 square feet for an ADU having one bedroom or less; and
        ii. 1,000 square feet for an ADU having more than one bedroom.

    c. The minimum square footage for an ADU shall be 150 square feet of total floor area.

    d. An ADU shall contain no more than two bedrooms.

9. **Additional Requirements.**

    a. All detached ADUs shall be constructed upon a permanent foundation.

    b. ADUs shall include sufficient permanent provisions for living, sleeping, eating, cooking, and sanitation, including but not limited to washer dryer hookups and kitchen facilities.

    c. Subject to Government Code section 65852.2(e)(1)(A), all detached ADUs must have separate utility meters. Consistent with Government Code section 66013, the connection may be subject to a connection fee or capacity charge that is proportionate to the burden of the proposed ADU.

    d. All ADUs must meet the requirements of all Uniform Codes, including but not limited to the California Building Code and the California Fire Code, as such codes have been adopted and amended by Title 8 of the City of Dana Point Municipal Code. In addition, ADUs that are attached to the primary dwelling shall contain a fire wall sufficient for fire retention.

    e. All ADUs are required to have separate exterior access from the proposed or existing primary residence.

f. Any attached or detached ADU shall be architecturally consistent with the primary residential or multi-family dwelling. In addition, all ADUs shall be designed and sited to: (i) be similar to the primary dwelling with respect to architectural style, roof pitch, color, and materials; (ii) protect public access to and along the shoreline areas; (iii) protect public views to and along the ocean and scenic coastal areas; (iv) protect sensitive coastal resources; and (v) minimize and, where feasible, avoid shoreline hazards.

g. Solar panels shall be required for any attached or detached ADU.

h. The Accessory Dwelling Unit shall not cause a substantial adverse change on any real property that is listed in the National Register of Historic Places, and/or California Register of Historic Places, and/or the City of Dana Point Historic Architectural Resources Inventory.

i. No roof decks or balconies shall be constructed above or upon an ADU.

j. Detached ADUs shall only be located in the rear ½ of the parcel. Attached ADUs shall only be located in the rear ½ of the primary dwelling.

k. In the event that the property upon which the ADU is proposed is located within a Homeowners Association ("HOA"), the applicant shall submit to the City written evidence of the HOA's approval of the ADU concurrent with their ADU application.

10. **Parking Requirements**. Except as provided in Section 9.07.210(F)(10)(e) below, ADUs shall meet the following parking standards:

a. At least one (1) off street parking space shall be provided per bedroom or per ADU, whichever is less

b. Parking spaces shall comply with Zoning Code Chapter 9.35, except as may be permitted in this Section, and be provided on the same lot as the ADU. A covered space is preferred, but not required.

c. The parking space(s) for the ADU shall be in addition to the parking required for the primary residential dwelling unit(s).

d. If uncovered, required parking may be located in required setback areas and may be provided through tandem parking. Applicants are encouraged to provide required uncovered parking spaces outside of front and street-side setback areas, if possible. If covered, required parking spaces shall comply with the setback and driveway length requirements applicable to the subject property. Notwithstanding the foregoing, the City may not allow tandem parking or parking to be provided within setback areas if it is determined to not be feasible due to specific site, topographical, or fire, life, and safety conditions.

e. The foregoing parking standards shall not be imposed on an ADU in any of the following circumstances:

i. The ADU is located within one-half (1/2) mile walking distance of public transit (including bus stops); or
ii. The ADU is located within an architecturally and historically significant district; or
iii. The ADU is part of the proposed or existing primary residence or and existing accessory structure;
iv. The ADU is located in an areas where on-street parking permits are required but not offered to ADU occupants; or
v. The ADU is located within one block of a car share vehicle area.

G **Associated Permits.** If an application for an ADU triggers the requirement for a discretionary or ministerial permit other than an ADU Permit and/or a building permit (including but not limited to a Site Development Permit, Coastal Development Permit and/or Conditional Use Permit), those associated permits must be applied for and obtained prior to application for an ADU Permit. The process for obtaining the associated permit(s) shall be as set forth in Title 9 of the Dana Point Zoning Code.

H **ADU Development Beyond Minimum Standards.** In the event an Applicant desires to develop an ADU beyond the development standards set forth in this Section, he/she may apply for a discretionary Site Development Permit in accordance with Dana Point Zoning Code Chapter 9.71, which shall be considered by the Planning Commission and appealed to the City Council in accordance with the procedures set forth in Dana Point Zoning Code section 9.61.110. However, in no case shall an ADU:

1. Be constructed less than 4-feet from the side or rear property lines,
2. Exceed the maximum building height of the zoning district,
3. Include living area larger than 1,200 square feet,
4. Include more than two bedrooms, and/or
5. Exceed the number of units stared in Section 9.07.210(F)(4)
6. Be sold, rented, or occupied in a manner prohibited by Section 9.07.210(2)-(3).

SECTION 6: Section 9.07.215 of the Dana Point Zoning Code shall be repealed and replaced in its entirety as follows:

9.07.215 Junior Accessory Dwelling Units

A **Purpose and Intent**. The purpose of this Section is to facilitate the increased production of Junior Accessory Dwelling Units ("JADUs") and provide for reasonable regulations for their development on lots developed or proposed to be developed with residential dwelling(s), in accordance with California Government Code Section 65852.2, or any successor statute. Formerly referred to as "second dwelling units" or "granny flats" in the City of Dana Point Municipal Code, such JADUs can contribute needed housing to the community's housing stock and promote housing opportunities for persons from a range of socioeconomic backgrounds who wish to reside in the city of Dana Point. In addition, the regulations in this ordinance are intended to promote the goals and policies of the City's General Plan, Local Coastal Program, and comply with requirements codified in the State Planning and Zoning Law related to Accessory Dwelling Units in residential areas, including Government Code Sections 65852.2 and 65852.22.

B **Applicability**.

1. New Junior Accessory Dwelling Units. Any construction, establishment, alteration, enlargement, or modification of a Junior Accessory Dwelling Unit shall comply with the requirements of this Section, the underlying development standards in the zoning district, as well as any applicable overlay district in which the lot is located, and the City's Building and Construction Codes as set forth in Title 8.

2. Legal Nonconforming Junior Accessory Dwelling Units. All Junior Accessory Dwelling Units which were legal at the time of their creation but which do not conform to this Section are deemed legal nonconforming and shall be subject to the provisions of Chapter 9.63 (Nonconforming Uses and Structures).

3. Existing Illegal Junior Accessory Dwelling Units. The provisions of this section shall in no way validate any existing illegal Junior Accessory Dwelling Unit. An application may be made pursuant to this Section to convert an illegal Junior Accessory Dwelling Unit to a legal conforming Junior Accessory Dwelling Unit, and shall be subject to the same standards and requirements as for a newly proposed Accessory Dwelling Unit.

C **Junior Accessory Dwelling Unit Permit Required**.

1. Permits. With the exception of legal non-conforming Junior Accessory Dwelling Units described in Section 9.07.210 (B)(2) above, all Junior Accessory Dwelling Units require a Junior Accessory Dwelling Unit Permit. The applicant shall also obtain a building permit as required by the City's Building and Construction Codes set forth in Title 8 and record a deed restriction as provided in Section 9.07.210.

2. Application Processing. An application for a Junior Accessory Dwelling Unit Permit shall be made on forms provided by the Department of Community Development and be submitted with any applicable fees. The application form shall specify all information needed in order for the JADU Permit application to be deemed complete. The application fee shall be established by resolution of the City Council. An application for a JADU Permit will be deemed complete once all information required by the application form has been submitted to the Community Development Department, including all required fees, and all

changes required to building permit plans submitted to the Community Development Department have been made to the satisfaction of the Director. The applicant shall be notified in writing once the Director determines the application is complete.

3. Review.

   a. The Community Development Director or designee will review and approve complete applications for Junior Accessory Dwelling Unit Permits for compliance with the requirements of this section. The Junior Accessory Dwelling Unit Permit application shall be considered ministerially without any discretionary review or a public hearing.

   b. The Community Development Director or designee shall either deny an application within 60 days after it is deemed complete, or approve it within the same time period if the proposed Junior Accessory Dwelling Unit complies with the requirements of this section and the underlying development standards in the zoning district as well as any applicable overlay district in which the lot is located. Prior to issuance of any building permits relating to the Junior Accessory Dwelling Unit, the applicant shall record the deed restriction described in Section 9.07.215(B)(2).

   c. Except as otherwise provided in this section, the construction of a Junior Accessory Dwelling Unit shall be subject to any applicable fees adopted pursuant to the requirements of Government Code, Title 7, Division 1, Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

4. Permit Revocation.

   a. The Building Official or his or her designee may revoke a Junior Accessory Dwelling Unit Permit if the Junior Accessory Dwelling Unit violates one or more requirements of this chapter.

   b. The Building Official or designee shall provide written notice of the decision to revoke the Junior Accessory Dwelling Unit Permit to the property owner by certified mail with return receipt requested.

   c. Within 15 days of the deposit of the notice of the decision to revoke the Junior Accessory Dwelling Unit Permit in the United States mail, the property owner and/or occupant may request a hearing before the Community Development Director. If the City receives a timely request for a hearing in accordance with this subsection, the decision to revoke shall be stayed until the hearing is concluded and the Director has made his or her determination. If the City does not receive a request for a hearing within 15 days, the revocation of the Junior Accessory Dwelling Unit Permit shall be final.

   d. If, after a hearing, the Director of Community Development affirms the revocation of the Junior Accessory Dwelling Unit Permit, the property owner and/or occupant may appeal the Director’s decision to the Planning Commission in accordance with Chapter Section 9.61.110. If the City receives a timely request for a hearing in accordance with Chapter Section 9.61.110, the decision to revoke shall be stayed until the hearing is concluded and the Planning Commission has made its determination.

e. If, after a hearing, the Planning Commission affirms the revocation of the Junior Accessory Dwelling Unit Permit, the property owner and/or occupant may appeal the Planning Commission's decision to the City Council in accordance with Chapter Section 9.61.110. If the City receives a timely request for a hearing in accordance with Chapter Section 9.61.110, the decision to revoke shall be stayed until the hearing is concluded and the City Council has made its determination. Such decision by the Council shall be final.

f. If a Junior Accessory Dwelling Unit Permit is revoked, all provisions of law, including specifically those set forth in the Municipal Code, applicable when either a building permit or a Use Permit is revoked shall apply. In addition, the property owner shall, within 60 days, obtain all necessary permits and remove the JADU improvements from the unit space, and shall not rent the unit except together with the primary residence to a single household.

D **Development Standards**. The development standards set forth below shall apply to all JADUs. For any development standard not explicitly identified below, the requirements of the underlying zoning district shall apply, unless superseded by State Law.

1. **Sale, Rental and Occupation of Units**. The JADU shall not be sold separately from the primary dwelling unit and shall be rented for less than thirty (30) days. In addition, either the JADU or the primary dwelling in which the JADU is located shall be occupied by the property owner at all times, unless the property is owned by a government agency, land trust, or housing organization.

2. **Deed Restriction**. A Deed Restriction prepared by the City shall be recorded on the subject property prior to issuance of the JADU Permit stating that (a) the JADU is subject to the requirements of this Section, (b) the JADU shall not sold separately from the primary dwelling unit, (c) the JADU shall not be rented for less than 30 days, (d) that either the JADU or the primary dwelling in which the JADU is located shall be occupied by the property owner at all times, and (e) the deed restrictions run with the land and may be enforced against future owners of the property.

3. **Number of Units Allowed**.

   a. Single Family Residential Zoning Districts. In single family residential zoning districts, an applicant shall be allowed to construct one (1) JADU within the walls of an existing or proposed primary residence. Pursuant to Government Code 65852.2, in addition to the one (1) Junior Accessory Dwelling Unit allowed in this Section, an applicant may also construct one (1) attached or detached ADU allowed so long as it complies with the requirements of Section 9.07.210.

4. **Unit Size and Construction**.

   a. The JADU shall not exceed 500 square feet.

   b. The JADU must be contained within the walls of an existing or proposed primary dwelling.

   c. No JADU shall be constructed in any dwelling that is non-conforming with respect to structure or use.

d. All JADUs must include an efficiency kitchen, which includes all of the following:

   i. a cooking facility with appliances;
   ii. a food preparation counter of reasonable size in relation to the size of the JADU; and
   iii. storage cabinets that are of reasonable size in relation to the size of the JADU.

e. Exterior access must be provided for all JADUs, separate from the main entrance to the primary residence.

f. All JADUs must meet the requirements of all Uniform Codes, including but not limited to the California Building Code and the California Fire Code, as such codes have been adopted and amended by Title 8 of the City of Dana Point Municipal Code. In addition, JADUs shall contain a fire wall sufficient for fire retention.

g. In the event that the property upon which the JADU is proposed is located within a Homeowners Association ("HOA"), the applicant shall submit to the City written evidence of the HOA's approval of the JADU concurrent with their JADU Permit Application.

5. **Parking**. No additional parking shall be required for a JADU, other than that which is required for the primary residence.

6. **Associated Permits**. If an application for a JADU triggers the requirement for a discretionary or ministerial permit other than a JADU Permit and/or a building permit (including but not limited to a Site Development Permit, Coastal Development Permit and/or Conditional Use Permit), those associated permits must be applied for and approved prior to application for a JADU Permit. The process for obtaining the associated permit(s) shall be as set forth in Title 9 of the Dana Point Zoning Code.

SECTION 7: This project statutorily exempt under the California Environmental Quality Act ("CEQA") pursuant to Public Resources Code Section 21080.17 and Section 15282(h) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, which exempts adoption of an ordinance regarding second units to implement provisions of Sections 65852.2 and 65852.22 of the Government Code. Additionally, this ordinance is categorically exempt pursuant to Sections 15303 (New Construction or Conversion of Small Structures) and 15305 (Minor Alterations in Land Use/Limitations). Similarly, the ministerial approval of accessory dwelling units and junior accessory dwelling units is not a "project" for CEQA purposes, and environmental review is not required prior to approving individual applications.

SECTION 8: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 9: An amendment to the City's Local Coastal Program ("LCP") is also underway. This Ordinance shall not become effective for projects located in the coastal zone until

approval of the LCP Amendment by the California Coastal Commission and adoption, including any modifications suggested by the California Coastal Commission, by resolution and/or ordinance of the City Council of the City of Dana Point.

PASSED, APPROVED, AND ADOPTED this ____ day of ____________, 2021

____
JAMEY M. FEDERICO, MAYOR

ATTEST:

____
SHAYNA SHARKE, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF DANA POINT)

I, SHAYNA SHARKE, City Clerk of the City of Dana Point, California, do hereby certify that the foregoing Ordinance No. 21-XX was duly introduced at a regular meeting of the City Council on the _______ day of ______, 2021, and was duly adopted and passed at a regular meeting of the City Council on the ____ day of ____________, 2021, by the following vote, to wit:

AYES:
NOES:
ABSTAIN:
ABSENT:

____
SHAYNA SHARKE, CITY CLERK

ORDINANCE NO. 21-XX

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss

AFFIDAVIT OF POSTING

CITY OF DANA POINT) AND PUBLISHING

SHAYNA SHARKE, being first duly sworn, deposes, and says: That she is the duly appointed and qualified City Clerk of the City of Dana Point;

That in compliance with State Laws of the State of California, ORDINANCE NO. 21-xx, being:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING ZONE TEXT AMENDMENT ZTA19-0002(II) TO MODIFY THE ZONING CODE RELATED TO ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS.

was published in summary in the Dana Point News on the ___ day of __________, 2021, and in further compliance with City Resolution No. XX-XX-XX-XX on the ____ day of ____________, 2021, was caused to be posted in four (4) public places in the City of Dana Point, to wit:

Dana Point City Hall
Capistrano Beach Post Office
Dana Point Post Office
Dana Point Library

____
SHAYNA SHARKE, CITY CLERK
Dana Point, California

California Department of Housing and Community Development

Accessory Dwelling Unit Handbook

Where foundations begin

Updated December 2020

Table of Contents

Understanding Accessory Dwelling Units (ADUs) and Their Importance 3

Summary of Recent Changes to Accessory Dwelling Unit Laws 5

Frequently Asked Questions: 8

1. Legislative Intent 8
2. Zoning, Development and Other Standards 9
   - A) Zoning and Development Standards 9
   - B) Size Requirements 11
   - C) Parking Requirements 12
   - D) Setbacks 13
   - E) Height Requirements 13
   - F) Bedrooms 13
   - G) Impact Fees 14
   - H) Conversion of Existing Space in Single Family, Accessory and Multifamily Structures and Other Statewide Permissible ADUs (Subdivision (e)) 15
   - I) Nonconforming Zoning Standards 16
   - J) Renter and Owner-occupancy 17
   - K) Fire Sprinkler Requirements 17
   - L) Solar Panel Requirements 17
3. Junior Accessory Dwelling Units (JADUs) – Government Code Section 65852.22 18
4. Manufactured Homes and ADUs 18
5. ADUs and the Housing Element 19
6. Homeowners Association 20
7. Enforcement 20
8. Other 20

Resources 22

Attachment 1: Statutory Changes (Strikeout/Italics and Underline) 23
Attachment 2: State Standards Checklist 37
Attachment 3: Bibliography 38

Understanding Accessory Dwelling Units (ADUs) and Their Importance

California's housing production is not keeping pace with demand. In the last decade, less than half of the homes needed to keep up with the population growth were built. Additionally, new homes are often constructed away from job-rich areas. This lack of housing that meets people's needs is impacting affordability and causing average housing costs, particularly for renters in California, to rise significantly. As affordable housing becomes less accessible, people drive longer distances between housing they can afford and their workplace or pack themselves into smaller shared spaces, both of which reduce quality of life and produce negative environmental impacts.

****

Beyond traditional construction, widening the range of housing types can increase the housing supply and help more low-income Californians thrive. Examples of some of these housing types are Accessory Dwelling Units (ADUs - also referred to as second units, in-law units, casitas, or granny flats) and Junior Accessory Dwelling Units (JADUs).

What is an ADU?

An ADU is an accessory dwelling unit with complete independent living facilities for one or more persons and has a few variations:

- Detached: The unit is separated from the primary structure.
- Attached: The unit is attached to the primary structure.
- Converted Existing Space: Space (e.g., master bedroom, attached garage, storage area, or similar use, or an accessory structure) on the lot of the primary residence that is converted into an independent living unit.
- Junior Accessory Dwelling Unit (JADU): A specific type of conversion of existing space that is contained entirely within an existing or proposed single-family residence.

ADUs tend to be significantly less expensive to build and offer benefits that address common development barriers such as affordability and environmental quality. Because ADUs must be built on lots with existing or proposed housing, they do not require paying for new land, dedicated parking or other costly infrastructure required to build a new single-family home. Because they are contained inside existing single-family homes, JADUs require relatively

modest renovations and are much more affordable to complete. ADUs are often built with cost-effective one or two-story wood frames, which are also cheaper than other new homes. Additionally, prefabricated ADUs can be directly purchased and save much of the time and money that comes with new construction. ADUs can provide as much living space as apartments and condominiums and work well for couples, small families, friends, young people, and seniors.

Much of California's housing crisis comes from job-rich, high-opportunity areas where the total housing stock is insufficient to meet demand and exclusionary practices have limited housing choice and inclusion. Professionals and students often prefer living closer to jobs and amenities rather than spending hours commuting. Parents often want better access to schools and do not necessarily require single-family homes to meet their needs. There is a shortage of affordable units, and the units that are available can be out of reach for many people. To address our state's needs, homeowners can construct an ADU on their lot or convert an underutilized part of their home into a JADU. This flexibility benefits both renters and homeowners who can receive extra monthly rent income.

ADUs also give homeowners the flexibility to share independent living areas with family members and others, allowing seniors to age in place as they require more care, thus helping extended families stay together while maintaining privacy. The space can be used for a variety of reasons, including adult children who can pay off debt and save up for living on their own.

New policies are making ADUs even more affordable to build, in part by limiting the development impact fees and relaxing zoning requirements. A 2019 study from the Terner Center on Housing Innovation noted that one unit of affordable housing in the Bay Area costs about $450,000. ADUs and JADUs can often be built at a fraction of that price and homeowners may use their existing lot to create additional housing, without being required to provide additional infrastructure. Often the rent generated from the ADU can pay for the entire project in a matter of years.

ADUs and JADUs are a flexible form of housing that can help Californians more easily access job-rich, high-opportunity areas. By design, ADUs are more affordable and can provide additional income to homeowners. Local governments can encourage the development of ADUs and improve access to jobs, education, and services for many Californians.

Summary of Recent Changes to Accessory Dwelling Unit Laws

In Government Code Section 65852.150, the California Legislature found and declared that, among other things, allowing accessory dwelling units (ADUs) in zones that allow single-family and multifamily uses provides additional rental housing, and is an essential component in addressing California's housing needs. Over the years, ADU law has been revised to improve its effectiveness at creating more housing units. Changes to ADU laws effective January 1, 2021, further reduce barriers, better streamline approval processes, and expand capacity to accommodate the development of ADUs and junior accessory dwelling units (JADUs).

ADUs are a unique opportunity to address a variety of housing needs and provide affordable housing options for family members, friends, students, the elderly, in-home health care providers, people with disabilities, and others. Further, ADUs offer an opportunity to maximize and integrate housing choices within existing neighborhoods.

Within this context, the California Department of Housing and Community Development (HCD) has prepared this guidance to assist local governments, homeowners, architects, and the general public in encouraging the development of ADUs. The following is a summary of recent legislation that amended ADU law: AB 3182 (2020) and SB 13, AB 68, AB 881, AB 587, AB 670, and AB 671 (2019). Please see Attachment 1 for the complete statutory changes for AB 3182 (2020) and SB 13, AB 68, AB 881, AB 587, AB 670, and AB 671 (2019).

AB 3182 (Ting)

Chapter 198, Statutes of 2020 (Assembly Bill 3182) builds upon recent changes to ADU law (Gov. Code, § 65852.2 and Civil Code Sections 4740 and 4741) to further address barriers to the development and use of ADUs and JADUs.

<u>This recent legislation, among other changes, addresses the following:</u>

- States that an application for the creation of an ADU or JADU shall be *deemed approved* (not just subject to ministerial approval) if the local agency has not acted on the completed application within 60 days.
- Requires ministerial approval of an application for a building permit within a residential or mixed-use zone to create one ADU *and* one JADU per lot (not one or the other), within the proposed or existing single-family dwelling, if certain conditions are met.
- Provides for the rental or leasing of a separate interest ADU or JADU in a common interest development, notwithstanding governing documents that otherwise appear to prohibit renting or leasing of a unit, *and* without regard to the date of the governing documents.

- Provides for not less than 25 percent of the separate interest units within a common interest development be allowed as rental or leasable units.

AB 68 (Ting), AB 881 (Bloom), and SB 13 (Wieckowski)

Chapter 653, Statutes of 2019 (Senate Bill 13, Section 3), Chapter 655, Statutes of 2019 (Assembly Bill 68, Section 2) and Chapter 659 (Assembly Bill 881, Section 1.5 and 2.5) build upon recent changes to ADU and JADU law (Gov. Code § 65852.2, 65852.22) and further address barriers to the development of ADUs and JADUs.

This legislation, among other changes, addresses the following:

- Prohibits local agencies from including in development standards for ADUs requirements on minimum lot size (Gov. Code, § 65852.2, subd. (a)(1)(B)(i)).
- Clarifies areas designated by local agencies for ADUs may be based on the adequacy of water and sewer services as well as impacts on traffic flow and public safety (Gov. Code, § 65852.2, subd. (a)(1)(A)).
- Eliminates all owner-occupancy requirements by local agencies for ADUs approved between January 1, 2020, and January 1, 2025 (Gov. Code, § 65852.2, subd. (a)(6)).
- Prohibits a local agency from establishing a maximum size of an ADU of less than 850 square feet, or 1,000 square feet if the ADU contains more than one bedroom and requires approval of a permit to build an ADU of up to 800 square feet (Gov. Code, § 65852.2, subds. (c)(2)(B) & (C)).
- Clarifies that when ADUs are created through the conversion of a garage, carport or covered parking structure, replacement of offstreet parking spaces cannot be required by the local agency (Gov. Code, § 65852.2, subd. (a)(1)(D)(xi)).
- Reduces the maximum ADU and JADU application review time from 120 days to 60 days (Gov. Code, § 65852.2, subd. (a)(3) and (b)).
- Clarifies that “public transit” includes various means of transportation that charge set fees, run on fixed routes and are available to the public (Gov. Code, § 65852.2, subd. (j)(10)).
- Establishes impact fee exemptions and limitations based on the size of the ADU. ADUs up to 750 square feet are exempt from impact fees (Gov. Code § 65852.2, subd. (f)(3)); ADUs that are 750 square feet or larger may be charged impact fees but only such fees that are proportional in size (by square foot) to those for the primary dwelling unit (Gov. Code, § 65852.2, subd. (f)(3)).
- Defines an “accessory structure” to mean a structure that is accessory or incidental to a dwelling on the same lot as the ADU (Gov. Code, § 65852.2, subd. (j)(2)).
- Authorizes HCD to notify the local agency if HCD finds that their ADU ordinance is not in compliance with state law (Gov. Code, § 65852.2, subd. (h)(2)).
- Clarifies that a local agency may identify an ADU or JADU as an adequate site to satisfy Regional Housing Needs Allocation (RHNA) housing needs (Gov. Code, §§ 65583.1, subd. (a), and 65852.2, subd. (m)).
- Permits JADUs even where a local agency has not adopted an ordinance expressly authorizing them (Gov. Code, § 65852.2, subds. (a)(3), (b), and (e)).

- Allows a permitted JADU to be constructed within the walls of the proposed or existing single-family residence and eliminates the required inclusion of an existing bedroom or an interior entry into the single-family residence (Gov. Code § 65852.22, subd. (a)(4); former Gov. Code § 65852.22, subd. (a)(5)).
- Requires, upon application and approval, a local agency to delay enforcement against a qualifying substandard ADU for five (5) years to allow the owner to correct the violation, so long as the violation is not a health and safety issue, as determined by the enforcement agency (Gov. Code, § 65852.2, subd. (n); Health & Safety Code, § 17980.12).

AB 587 (Friedman), AB 670 (Friedman), and AB 671 (Friedman)

In addition to the legislation listed above, AB 587 (Chapter 657, Statutes of 2019), AB 670 (Chapter 178, Statutes of 2019), and AB 671 (Chapter 658, Statutes of 2019) also have an impact on state ADU law, particularly through Health and Safety Code Section 17980.12. These pieces of legislation, among other changes, address the following:

- AB 587 creates a narrow exemption to the prohibition for ADUs to be sold or otherwise conveyed separately from the primary dwelling by allowing deed-restricted sales to occur if the local agency adopts an ordinance. To qualify, the primary dwelling and the ADU are to be built by a qualified nonprofit corporation whose mission is to provide units to low-income households (Gov. Code, § 65852.26).
- AB 670 provides that covenants, conditions and restrictions (CC&Rs) that either effectively prohibit or unreasonably restrict the construction or use of an ADU or JADU on a lot zoned for single-family residential use are void and unenforceable (Civ, Code, § 4751).
- AB 671 requires local agencies' housing elements to include a plan that incentivizes and promotes the creation of ADUs that can offer affordable rents for very low, low-, or moderate-income households and requires HCD to develop a list of state grants and financial incentives in connection with the planning, construction and operation of affordable ADUs (Gov. Code, § 65583; Health & Safety Code, § 50504.5).

.

.

Frequently Asked Questions: Accessory Dwelling Units[1]

1. Legislative Intent

a. Should a local ordinance encourage the development of accessory dwelling units?

Yes. Pursuant to Government Code Section 65852.150, the California Legislature found and declared that, among other things, California is facing a severe housing crisis and ADUs are a valuable form of housing that meets the needs of family members, students, the elderly, in-home health care providers, people with disabilities and others. Therefore, ADUs are an essential component of California's housing supply.

ADU law and recent changes intend to address barriers, streamline approval,

Government Code 65852.150:

(a) The Legislature finds and declares all of the following:

(1) Accessory dwelling units are a valuable form of housing in California.

(2) Accessory dwelling units provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods.

(3) Homeowners who create accessory dwelling units benefit from added income, and an increased sense of security.

(4) Allowing accessory dwelling units in single-family or multifamily residential zones provides additional rental housing stock in California.

(5) California faces a severe housing crisis.

(6) The state is falling far short of meeting current and future housing demand with serious consequences for the state's economy, our ability to build green infill consistent with state greenhouse gas reduction goals, and the well-being of our citizens, particularly lower and middle-income earners.

(7) Accessory dwelling units offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character.

(8) Accessory dwelling units are, therefore, an essential component of California's housing supply.

(b) It is the intent of the Legislature that an accessory dwelling unit ordinance adopted by a local agency has the effect of providing for the creation of accessory dwelling units and that provisions in this ordinance relating to matters including unit size, parking, fees, and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units in zones in which they are authorized by local ordinance.

[1] Note: Unless otherwise noted, the Government Code section referenced is 65852.2.

and expand potential capacity for ADUs, recognizing their unique importance in addressing California's housing needs. The preparation, adoption, amendment, and implementation of local ADU ordinances must be carried out consistent with Government Code, Section 65852.150 and must not unduly constrain the creation of ADUs. Local governments adopting ADU ordinances should carefully weigh the adoption of zoning, development standards, and other provisions for impacts on the development of ADUs.

In addition, ADU law is the statutory minimum requirement. Local governments may elect to go beyond this statutory minimum and further the creation of ADUs. Many local governments have embraced the importance of ADUs as an important part of their overall housing policies and have pursued innovative strategies. (Gov. Code, § 65852.2, subd. (g)).

2. Zoning, Development and Other Standards

A) Zoning and Development Standards

- **Are ADUs allowed jurisdiction wide?**

No. ADUs proposed pursuant to subdivision (e) must be considered in any residential or mixed-use zone. For other ADUs, local governments may, by ordinance, designate areas in zones where residential uses are permitted that will also permit ADUs. However, any limits on where ADUs are permitted may only be based on the adequacy of water and sewer service, and the impacts on traffic flow and public safety. Further, local governments may not preclude the creation of ADUs altogether, and any limitation should be accompanied by detailed findings of fact explaining why ADU limitations are required and consistent with these factors.

Examples of public safety include severe fire hazard areas and inadequate water and sewer service and includes cease and desist orders. Impacts on traffic flow should consider factors like lesser car ownership rates for ADUs and the potential for ADUs to be proposed pursuant to Government Code section 65852.2, subdivision (e). Finally, local governments may develop alternative procedures, standards, or special conditions with mitigations for allowing ADUs in areas with potential health and safety concerns. (Gov. Code, § 65852.2, subd. (e))

Residential or mixed-use zone should be construed broadly to mean any zone where residential uses are permitted by-right or by conditional use.

- **Can a local government apply design and development standards?**

Yes. A local government may apply development and design standards that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. However, these standards shall be sufficiently objective to allow ministerial review of an ADU. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i))

ADUs created under subdivision (e) of Government Code 65852.2 shall not be subject to design and development standards except for those that are noted in the subdivision.

What does objective mean?

“objective zoning standards” and “objective design review standards” mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. Gov Code § 65913.4, subd. (a)(5)

ADUs that do not meet objective and ministerial development and design standards may still be permitted through an ancillary discretionary process if the applicant chooses to do so. Some jurisdictions with compliant ADU ordinances apply additional processes to further the creation of ADUs that do not otherwise comply with the minimum standards necessary for ministerial review. Importantly, these processes are intended to provide additional opportunities to create ADUs that would not otherwise be permitted, and a discretionary process may not be used to review ADUs that are fully compliant with ADU law. Examples of these processes include areas where additional health and safety concerns must be considered, such as fire risk.

- **Can ADUs exceed general plan and zoning densities?**

  Yes. An ADU is an accessory use for the purposes of calculating allowable density under the general plan and zoning that does not count toward the allowable density. For example, if a zoning district allows one unit per 7,500 square feet, then an ADU would not be counted as an additional unit. Further, local governments could elect to allow more than one ADU on a lot, and ADUs are automatically a residential use deemed consistent with the general plan and zoning. (Gov. Code, § 65852.2, subd. (a)(1)(C).)

- **Are ADUs permitted ministerially?**

  Yes. ADUs must be considered, approved, and permitted ministerially, without discretionary action. Development and other decision-making standards must be sufficiently objective to allow for ministerial review. Examples include numeric and fixed standards such as heights or setbacks, or design standards such as colors or materials. Subjective standards require judgement and can be interpreted in multiple ways such as privacy, compatibility with neighboring properties or promoting harmony and balance in the community; subjective standards shall not be imposed for ADU development. Further, ADUs must not be subject to a hearing or any ordinance regulating the issuance of variances or special use permits and must be considered ministerially. (Gov. Code, § 65852.2, subd. (a)(3).)

- **Can I create an ADU if I have multiple detached dwellings on a lot?**

  Yes. A lot where there are currently multiple detached single-family dwellings is eligible for creation of one ADU per lot by converting space within the proposed or existing space of a single-family dwelling or existing structure or a new construction detached ADU subject to certain development standards.

- **Can I build an ADU in a historic district, or if the primary residence is subject to historic preservation?**

  Yes. ADUs are allowed within a historic district, and on lots where the primary residence is subject to historic preservation. State ADU law allows for a local agency to impose standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. However, these standards do not apply to ADUs proposed pursuant to Government Code section 65852.2, subdivision (e).

As with non-historic resources, a jurisdiction may impose objective and ministerial standards that are sufficiently objective to be reviewed ministerially and do not unduly burden the creation of ADUs. Jurisdictions are encouraged to incorporate these standards into their ordinance and submit these standards along with their ordinance to HCD. (Gov. Code, § 65852.2, subds. (a)(1)(B)(i) & (a)(5).)

B) Size Requirements

- **Is there a minimum lot size requirement?**

No. While local governments may impose standards on ADUs, these standards shall not include minimum lot size requirements. Further, lot coverage requirements cannot preclude the creation of a statewide exemption ADU (800 square feet ADU with a height limitation of 16 feet and 4 feet side and rear yard setbacks). If lot coverage requirements do not allow such an ADU, an automatic exception or waiver should be given to appropriate development standards such as lot coverage, floor area or open space requirements. Local governments may continue to enforce building and health and safety standards and may consider design, landscape, and other standards to facilitate compatibility.

What is a statewide exemption ADU?

A statewide exemption ADU is an ADU of up to 800 square feet, 16 feet in height, as potentially limited by a local agency, and with 4 feet side and rear yard setbacks. ADU law requires that no lot coverage, floor area ratio, open space, or minimum lot size will preclude the construction of a statewide exemption ADU. Further, ADU law allows the construction of a detached new construction statewide exemption ADU to be combined on the same lot with a JADU in a single-family residential zone. In addition, ADUs are allowed in any residential or mixed uses regardless of zoning and development standards imposed in an ordinance. See more discussion below.

- **Can minimum and maximum unit sizes be established for ADUs?**

Yes. A local government may, by ordinance, establish minimum and maximum unit size requirements for both attached and detached ADUs. However, maximum unit size requirements must be at least 850 square feet and 1,000 square feet for ADUs with more than one bedroom. For local agencies without an ordinance, maximum unit sizes are 1,200 square feet for a new detached ADU and up to 50 percent of the floor area of the existing primary dwelling for an attached ADU (at least 800 square feet). Finally, the local agency must not establish by ordinance a minimum square footage requirement that prohibits an efficiency unit, as defined in Health and Safety Code section 17958.1.

The conversion of an existing accessory structure or a portion of the existing primary residence to an ADU is not subject to size requirements. For example, an existing 3,000 square foot barn converted to an ADU would not be subject to the size requirements, regardless if a local government has an adopted ordinance. Should an applicant want to expand an accessory structure to create an ADU beyond 150 square feet, this ADU would be subject to the size maximums outlined in state ADU law, or the local agency's adopted ordinance.

- **Can a percentage of the primary dwelling be used for a maximum unit size?**

Yes. Local agencies may utilize a percentage (e.g., 50 percent) of the primary dwelling as a maximum unit size for attached or detached ADUs but only if it does not restrict an ADU's size to less than the standard of at least 850 square feet (or at least 1000 square feet for ADUs with more than one bedroom). Local agencies must not, by ordinance, establish any other minimum or maximum unit sizes, including based on

a percentage of the primary dwelling, that precludes a statewide exemption ADU. Local agencies utilizing percentages of the primary dwelling as maximum unit sizes could consider multi-pronged standards to help navigate these requirements (e.g., shall not exceed 50 percent of the dwelling or 1,000 square feet, whichever is greater).

- **Can maximum unit sizes exceed 1,200 square feet for ADUs?**

  Yes. Maximum unit sizes, by ordinance, can exceed 1,200 square feet for ADUs. ADU law does not limit the authority of local agencies to adopt less restrictive requirements for the creation of ADUs (Gov. Code, § 65852.2, subd. (g)).

  Larger unit sizes can be appropriate in a rural context or jurisdictions with larger lot sizes and is an important approach to creating a full spectrum of ADU housing choices.

C) Parking Requirements

- **Can parking requirements exceed one space per unit or bedroom?**

  No. Parking requirements for ADUs shall not exceed one parking space per unit or bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway. Guest parking spaces shall not be required for ADUs under any circumstances.

What is Tandem Parking? Tandem parking means two or more automobiles that are parked on a driveway or in any other location on a lot, lined up behind one another. (Gov. Code, § 65852.2, subds. (a)(1)(D)(x)(I) and (j)(11).)

  Local agencies may choose to eliminate or reduce parking requirements for ADUs such as requiring zero or half a parking space per each ADU.

- **Is flexibility for siting parking required?**

  Yes. Local agencies should consider flexibility when siting parking for ADUs. Offstreet parking spaces for the ADU shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made. Specific findings must be based on specific site or regional topographical or fire and life safety conditions.

  When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU, or converted to an ADU, the local agency shall not require that those offstreet parking spaces for the primary unit be replaced. (Gov. Code, § 65852.2, subd. (a)(D)(xi).)

- **Can ADUs be exempt from parking?**

  Yes. A local agency shall not impose ADU parking standards for any of the following, pursuant to Government Code section 65852.2, subdivisions (d)(1-5) and (j)(10).

  (1) Accessory dwelling unit is located within one-half mile walking distance of public transit.

(2) Accessory dwelling unit is located within an architecturally and historically significant historic district.
(3) Accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.
(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

Note: For the purposes of state ADU law, a jurisdiction may use the designated areas where a car share vehicle may be accessed. Public transit is any location where an individual may access buses, trains, subways and other forms of transportation that charge set fares, run on fixed routes and are available to the general public. Walking distance is defined as the pedestrian shed to reach public transit. Additional parking requirements to avoid impacts to public access may be required in the coastal zone.

D) Setbacks

- **Can setbacks be required for ADUs?**

Yes. A local agency may impose development standards, such as setbacks, for the creation of ADUs. Setbacks may include front, corner, street, and alley setbacks. Additional setback requirements may be required in the coastal zone if required by a local coastal program. Setbacks may also account for utility easements or recorded setbacks. However, setbacks must not unduly constrain the creation of ADUs and cannot be required for ADUs proposed pursuant to subdivision (e). Further, a setback of no more than four feet from the side and rear lot lines shall be required for an attached or detached ADU. (Gov. Code, § 65852.2, subd. (a)(1)(D)(vii).)

A local agency may also allow the expansion of a detached structure being converted into an ADU when the existing structure does not have four-foot rear and side setbacks. A local agency may also allow the expansion area of a detached structure being converted into an ADU to have no setbacks, or setbacks of less than four feet, if the existing structure has no setbacks, or has setbacks of less than four feet. A local agency shall not require setbacks of more than four feet for the expanded area of a detached structure being converted into an ADU.

A local agency may still apply front yard setbacks for ADUs, but front yard setbacks cannot preclude a statewide exemption ADU and must not unduly constrain the creation of all types of ADUs. (Gov. Code, § 65852.2, subd. (c).)

E) Height Requirements

- **Is there a limit on the height of an ADU or number of stories?**

Not in state ADU law, but local agencies may impose height limits provided that the limit is no less than 16 feet. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i).)

F) Bedrooms

- **Is there a limit on the number of bedrooms?**

State ADU law does not allow for the limitation on the number of bedrooms of an ADU. A limit on the number of bedrooms could be construed as a discriminatory practice towards protected classes, such as familial status, and would be considered a constraint on the development of ADUs.

G) Impact Fees

- **Can impact fees be charged for an ADU less than 750 square feet?**

No. An ADU is exempt from incurring impact fees from local agencies, special districts, and water corporations if less than 750 square feet. Should an ADU be 750 square feet or larger, impact fees shall be charged proportionately in relation to the square footage of the ADU to the square footage of the primary dwelling unit.

What is "Proportionately"? "Proportionately" is some amount that corresponds to a total amount, in this case, an impact fee for a single-family dwelling. For example, a 2,000 square foot primary dwelling with a proposed 1,000 square foot ADU could result in 50 percent of the impact fee that would be charged for a new primary dwelling on the same site. In all cases, the impact fee for the ADU must be less than the primary dwelling. Otherwise, the fee is not calculated proportionately. When utilizing proportions, careful consideration should be given to the impacts on costs, feasibility, and ultimately, the creation of ADUs. In the case of the example above, anything greater than 50 percent of the primary dwelling could be considered a constraint on the development of ADUs.

For purposes of calculating the fees for an ADU on a lot with a multifamily dwelling, the proportionality shall be based on the average square footage of the units within that multifamily dwelling structure. For ADUs converting existing space with a 150 square foot expansion, a total ADU square footage over 750 square feet could trigger the proportionate fee requirement. (Gov. Code, § 65852.2, subd. (f)(3)(A).)

- **Can local agencies, special districts or water corporations waive impact fees?**

Yes. Agencies can waive impact and any other fees for ADUs. Also, local agencies may also use fee deferrals for applicants.

- **Can school districts charge impact fees?**

Yes. School districts are authorized but do not have to levy impact fees for ADUs greater than 500 square feet pursuant to Section 17620 of the Education Code. ADUs less than 500 square feet are not subject to school impact fees. Local agencies are encouraged to coordinate with school districts to carefully weigh the importance of promoting ADUs, ensuring appropriate nexus studies and appropriate fees to facilitate construction or reconstruction of adequate school facilities.

- **What types of fees are considered impact fees?**

Impact fees charged for the construction of ADUs must be determined in accordance with the Mitigation Fee Act and generally include any monetary exaction that is charged by a local agency in connection with the approval of an ADU, including impact fees, for the purpose of defraying all or a portion of the cost of public facilities relating to the ADU. A local agency, special district or water corporation shall not consider ADUs as a new residential use for the purposes of calculating connection fees or capacity charges for

utilities, including water and sewer services. However, these provisions do not apply to ADUs that are constructed concurrently with a new single-family home. (Gov. Code, §§ 65852.2, subd. (f), and 66000)

- **Can I still be charged water and sewer connection fees?**

ADUs converted from existing space and JADUs shall not be considered by a local agency, special district or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, unless constructed with a new single-family dwelling. The connection fee or capacity charge shall be proportionate to the burden of the proposed ADU, based on its square footage or plumbing fixtures as compared to the primary dwelling. State ADU law does not cover monthly charge fees. (Gov. Code, § 65852.2, subd. (f)(2)(A).)

H) Conversion of Existing Space in Single Family, Accessory and Multifamily Structures and Other Statewide Permissible ADUs (Subdivision (e))

- **Are local agencies required to comply with subdivision (e)?**

Yes. All local agencies must comply with subdivision (e). This subdivision requires the ministerial approval of ADUs within a residential or mixed-use zone. The subdivision creates four categories of ADUs that should not be subject to other specified areas of ADU law, most notably zoning and development standards. For example, ADUs under this subdivision should not have to comply with lot coverage, setbacks, heights, and unit sizes. However, ADUs under this subdivision must meet the building code and health and safety requirements. The four categories of ADUs under subdivision (e) are:

b. **One ADU and one JADU are permitted per lot within the existing or proposed space of a single-family dwelling, or a JADU within the walls of the single family residence, or an ADU within an existing accessory structure, that meets specified requirements such as exterior access and setbacks for fire and safety.**
c. **One detached new construction ADU that does not exceed four-foot side and rear yard setbacks. This ADU may be combined on the same lot with a JADU and may be required to meet a maximum unit size requirement of 800 square feet and a height limitation of 16 feet.**
d. **Multiple ADUs within the portions of multifamily structures that are not used as livable space. Local agencies must allow at least one of these types of ADUs and up to 25 percent of the existing multifamily structures.**
e. **Up to two detached ADUs on a lot that has existing multifamily dwellings that are subject to height limits of 16 feet and 4-foot rear and side yard setbacks.**

The above four categories are not required to be combined. For example, local governments are not required to allow (a) and (b) together or (c) and (d) together. However, local agencies may elect to allow these ADU types together.

Local agencies shall allow at least one ADU to be created within the non-livable space within multifamily dwelling structures, or up to 25 percent of the existing multifamily dwelling units within a structure and may also allow not more than two ADUs on the lot detached from the multifamily dwelling structure. New detached units are subject to height limits of 16 feet and shall not be required to have side and rear setbacks of more than four feet.

The most common ADU that can be created under subdivision (e) is a conversion of proposed or existing space of a single-family dwelling or accessory structure into an ADU, without any prescribed size limitations, height, setback, lot coverage, architectural review, landscape, or other development standards. This would enable the conversion of an accessory structure, such as a 2,000 square foot garage, to an ADU without any additional requirements other than compliance with building standards for dwellings. These types of ADUs are also eligible for a 150 square foot expansion (see discussion below).

ADUs created under subdivision (e) shall not be required to provide replacement or additional parking. Moreover, these units shall not, as a condition for ministerial approval, be required to correct any existing or created nonconformity. Subdivision (e) ADUs shall be required to be rented for terms longer than 30 days, and only require fire sprinklers if fire sprinklers are required for the primary residence. These ADUs shall not be counted as units when calculating density for the general plan and are not subject to owner-occupancy.

- **Can I convert my accessory structure into an ADU?**

Yes. The conversion of garages, sheds, barns, and other existing accessory structures, either attached or detached from the primary dwelling, into ADUs is permitted and promoted through the state ADU law. These conversions of accessory structures are not subject to any additional development standard, such as unit size, height, and lot coverage requirements, and shall be from existing space that can be made safe under building and safety codes. A local agency should not set limits on when the structure was created, and the structure must meet standards for health and safety. Finally, local governments may also consider the conversion of illegal existing space and could consider alternative building standards to facilitate the conversion of existing illegal space to minimum life and safety standards.

- **Can an ADU converting existing space be expanded?**

Yes. An ADU created within the existing or proposed space of a single-family dwelling or accessory structure can be expanded beyond the physical dimensions of the structure. In addition, an ADU created within an existing accessory structure may be expanded up to 150 square feet without application of local development standards, but this expansion shall be limited to accommodating ingress and egress. An example of where this expansion could be applicable is for the creation of a staircase to reach a second story ADU. These types of ADUs shall conform to setbacks sufficient for fire and safety.

A local agency may allow for an expansion beyond 150 square feet, though the ADU would have to comply with the size maximums as per state ADU law, or a local agency's adopted ordinance.

As a JADU is limited to being created within the walls of a primary residence, this expansion of up to 150 square feet does not pertain to JADUs.

I) Nonconforming Zoning Standards

- **Does the creation of an ADU require the applicant to carry out public improvements?**

No physical improvements shall be required for the creation or conversion of an ADU. Any requirement to carry out public improvements is beyond what is required for the creation of an ADU, as per state law. For example, an applicant shall not be required to improve sidewalks, carry out street improvements, or access improvements to create an ADU. Additionally, as a condition for ministerial approval of an ADU, an applicant shall not be required to correct nonconforming zoning conditions. (Gov. Code, § 65852.2, subd. (e)(2).)

J) Renter and Owner-occupancy

- **Are rental terms required?**

Yes. Local agencies may require that the property be used for rentals of terms longer than 30 days. ADUs permitted ministerially, under subdivision (e), shall be rented for terms longer than 30 days. (Gov. Code, § 65852.2, subds. (a)(6) & (e)(4).)

- **Are there any owner-occupancy requirements for ADUs?**

No. Prior to recent legislation, ADU laws allowed local agencies to elect whether the primary dwelling or ADU was required to be occupied by an owner. The updates to state ADU law removed the owner-occupancy allowance for newly created ADUs effective January 1, 2020. The new owner-occupancy exclusion is set to expire on December 31, 2024. Local agencies may not retroactively require owner occupancy for ADUs permitted between January 1, 2020, and December 31, 2024.

However, should a property have both an ADU and JADU, JADU law requires owner-occupancy of either the newly created JADU, or the single-family residence. Under this specific circumstance, a lot with an ADU would be subject to owner-occupancy requirements. (Gov. Code, § 65852.2, subd. (a)(2).)

K) Fire Sprinkler Requirements

- **Are fire sprinklers required for ADUs?**

No. Installation of fire sprinklers may not be required in an ADU if sprinklers are not required for the primary residence. For example, a residence built decades ago would not have been required to have fire sprinklers installed under the applicable building code at the time. Therefore, an ADU created on this lot cannot be required to install fire sprinklers. However, if the same primary dwelling recently undergoes significant remodeling and is now required to have fire sprinklers, any ADU created after that remodel must likewise install fire sprinklers. (Gov. Code, § 65852.2, subds. (a)(1)(D)(xii) and (e)(3).)

Please note, for ADUs created on lots with multifamily residential structures, the entire residential structure shall serve as the “primary residence” for the purposes of this analysis. Therefore, if the multifamily structure is served by fire sprinklers, the ADU can be required to install fire sprinklers.

L) Solar Panel Requirements

- **Are solar panels required for new construction ADUs?**

Yes, newly constructed ADUs are subject to the Energy Code requirement to provide solar panels if the unit(s) is a newly constructed, non-manufactured, detached ADU. Per the California Energy Commission (CEC), the panels can be installed on the ADU or on the primary dwelling unit. ADUs that are constructed within existing space, or as an addition to existing homes, including detached additions where an existing detached building is converted from non-residential to residential space, are not subject to the Energy Code requirement to provide solar panels.

Please refer to the CEC on this matter. For more information, see the CEC's website www.energy.ca.gov. You may email your questions to: title24@energy.ca.gov, or contact the Energy Standards Hotline at 800-772-3300. CEC memos can also be found on HCD's website at https://www.hcd.ca.gov/policy-research/AccessoryDwellingUnits.shtml.

3. Junior Accessory Dwelling Units (JADUs) – Government Code Section 65852.22

- **Are two JADUs allowed on a lot?**

No. A JADU may be created on a lot zoned for single-family residences with one primary dwelling. The JADU may be created within the walls of the proposed or existing single-family residence, including attached garages, as attached garages are considered within the walls of the existing single-family residence. Please note that JADUs created in the attached garage are not subject to the same parking protections as ADUs and could be required by the local agency to provide replacement parking.

JADUs are limited to one per residential lot with a single-family residence. Lots with multiple detached single-family dwellings are not eligible to have JADUs. (Gov. Code, § 65852.22, subd. (a)(1).)

- **Are JADUs allowed in detached accessory structures?**

No, JADUs are not allowed in accessory structures. The creation of a JADU must be within the single-family residence. As noted above, attached garages are eligible for JADU creation. The maximum size for a JADU is 500 square feet. (Gov. Code, § 65852.22, subds. (a)(1), (a)(4), and (h)(1).)

- **Are JADUs allowed to be increased up to 150 square feet when created within an existing structure?**

No. Only ADUs are allowed to add up to 150 square feet "beyond the physical dimensions of the existing accessory structure" to provide for ingress. (Gov. Code, § 65852.2, subd. (e)(1)(A)(i).)

This provision extends only to ADUs and excludes JADUs. A JADU is required to be created within the single-family residence.

- **Are there any owner-occupancy requirements for JADUs?**

Yes. There are owner-occupancy requirements for JADUs. The owner must reside in either the remaining portion of the primary residence, or in the newly created JADU. (Gov. Code, § 65852.22, subd. (a)(2).)

4. Manufactured Homes and ADUs

- **Are manufactured homes considered to be an ADU?**

Yes. An ADU is any residential dwelling unit with independent facilities and permanent provisions for living, sleeping, eating, cooking and sanitation. An ADU includes a manufactured home (Health & Saf. Code, § 18007).

Health and Safety Code section 18007, subdivision (a): **“Manufactured home,”** for the purposes of this part, means a structure that was constructed on or after June 15, 1976, is transportable in one or more sections, is eight body feet or more in width, or 40 body feet or more in length, in the traveling mode, or, when erected on site, is 320 or more square feet, is built on a permanent chassis and designed to be used as a single-family dwelling with or without a foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. “Manufactured home” includes any structure that meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification and complies with the standards established under the National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C., Sec. 5401, and following).

5. ADUs and the Housing Element

- **Do ADUs and JADUs count toward a local agency’s Regional Housing Needs Allocation?**

  Yes. Pursuant to Government Code section 65852.2 subdivision (m), and section 65583.1, ADUs and JADUs may be utilized towards the Regional Housing Need Allocation (RHNA) and Annual Progress Report (APR) pursuant to Government Code section 65400. To credit a unit toward the RHNA, HCD and the Department of Finance (DOF) utilize the census definition of a housing unit. Generally, an ADU, and a JADU with shared sanitation facilities, and any other unit that meets the census definition, and is reported to DOF as part of the DOF annual City and County Housing Unit Change Survey, can be credited toward the RHNA based on the appropriate income level. The housing element or APR must include a reasonable methodology to demonstrate the level of affordability. Local governments can track actual or anticipated affordability to assure ADUs and JADUs are counted towards the appropriate income category. For example, some local governments request and track information such as anticipated affordability as part of the building permit or other applications.

- **Is analysis required to count ADUs toward the RHNA in the housing element?**

  Yes. To calculate ADUs in the housing element, local agencies must generally use a three-part approach: (1) development trends, (2) anticipated affordability and (3) resources and incentives. Development trends must consider ADUs permitted in the prior planning period and may also consider more recent trends. Anticipated affordability can use a variety of methods to estimate the affordability by income group. Common approaches include rent surveys of ADUs, using rent surveys and square footage assumptions and data available through the APR pursuant to Government Code section 65400. Resources and incentives include policies and programs to encourage ADUs, such as prototype plans, fee waivers, expedited procedures and affordability monitoring programs.

- **Are ADUs required to be addressed in the housing element?**

  Yes. The housing element must include a description of zoning available to permit ADUs, including development standards and analysis of potential constraints on the development of ADUs. The element must include programs as appropriate to address identified constraints. In addition, housing elements must

include a plan that incentivizes and promotes the creation of ADUs that can offer affordable rents for very low, low-, or moderate-income households and requires HCD to develop a list of state grants and financial incentives in connection with the planning, construction and operation of affordable ADUs. (Gov. Code, § 65583 and Health & Saf. Code, § 50504.5.)

6. Homeowners Association

- **Can my local Homeowners Association (HOA) prohibit the construction of an ADU or JADU?**

No. 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.

7. Enforcement

- **Does HCD have enforcement authority over ADU ordinances?**

Yes. After adoption of the ordinance, HCD may review and submit written findings to the local agency as to whether the ordinance complies with state ADU law. If the local agency's ordinance does not comply, HCD must provide a reasonable time, no longer than 30 days, for the local agency to respond, and the local agency shall consider HCD's findings to amend the ordinance to become compliant. If a local agency does not make changes and implements an ordinance that is not compliant with state law, HCD may refer the matter to the Attorney General.

In addition, HCD may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify ADU law.

8. Other

- **Are ADU ordinances existing prior to new 2020 laws null and void?**

No. Ordinances existing prior to the new 2020 laws are only null and void to the extent that existing ADU ordinances conflict with state law. Subdivision (a)(4) of Government Code Section 65852.2 states an ordinance that fails to meet the requirements of subdivision (a) shall be null and void and shall apply the state standards (see Attachment 3) until a compliant ordinance is adopted. However, ordinances that substantially comply with ADU law may continue to enforce the existing ordinance to the extent it complies with state law. For example, local governments may continue the compliant provisions of an ordinance and apply the state standards where pertinent until the ordinance is amended or replaced to fully comply with ADU law. At the same time, ordinances that are fundamentally incapable of being enforced because key provisions are invalid -- meaning there is not a reasonable way to sever conflicting provisions and apply the remainder of an ordinance in a way that is consistent with state law -- would be fully null and void and must follow all state standards until a compliant ordinance is adopted.

- **Do local agencies have to adopt an ADU ordinance?**

  No. Local governments may choose not to adopt an ADU ordinance. Should a local government choose to not adopt an ADU ordinance, any proposed ADU development would be only subject to standards set in state ADU law. If a local agency adopts an ADU ordinance, it may impose zoning, development, design, and other standards in compliance with state ADU law. (See Attachment 4 for a state standards checklist.)

- **Is a local government required to send an ADU ordinance to the California Department of Housing and Community Development (HCD)?**

  Yes. A local government, upon adoption of an ADU ordinance, must submit a copy of the adopted ordinance to HCD within 60 days after adoption. After the adoption of an ordinance, the Department may review and submit written findings to the local agency as to whether the ordinance complies with this section. (Gov. Code, § 65852.2, subd. (h)(1).)

  Local governments may also submit a draft ADU ordinance for preliminary review by HCD. This provides local agencies the opportunity to receive feedback on their ordinance and helps to ensure compliance with the new state ADU law.

- **Are charter cities and counties subject to the new ADU laws?**

  Yes. ADU law applies to a local agency which is defined as a city, county, or city and county, whether general law or chartered. (Gov. Code, § 65852.2, subd. (j)(5)).

  Further, pursuant to Chapter 659, Statutes of 2019 (AB 881), the Legislature found and declared ADU law as *"…a matter of statewide concern rather than a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution*" and concluded that ADU law applies to all cities, including charter cities.

- **Do the new ADU laws apply to jurisdictions located in the Coastal Zone?**

  Yes. ADU laws apply to jurisdictions in the Coastal Zone, but do not necessarily alter or lessen the effect or application of Coastal Act resource protection policies. (Gov. Code, § 65852.22, subd. (l)).

  Coastal localities should seek to harmonize the goals of protecting coastal resources and addressing housing needs of Californians. For example, where appropriate, localities should amend Local Coastal Programs for California Coastal Commission review to comply with the California Coastal Act and new ADU laws. For more information, see the California Coastal Commission 2020 Memo and reach out to the locality's local Coastal Commission district office.

- **What is considered a multifamily dwelling?**

  For the purposes of state ADU law, a structure with two or more attached dwellings on a single lot is considered a multifamily dwelling structure. Multiple detached single-unit dwellings on the same lot are not considered multifamily dwellings for the purposes of state ADU law.

Resources

Attachment 1: Statutory Changes (Strikeout/Italics and Underline)

GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 4, ARTICLE 2

Combined changes from (AB 3182 Accessory Dwelling Units)
and (AB 881, AB 68 and SB 13 Accessory Dwelling Units)
(Changes noted in strikeout, underline/italics)

Effective January 1, 2021, Section 65852.2 of the Government Code is amended to read:

65852.2.

(a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:
(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.
(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. These standards shall not include requirements on minimum lot size.
(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.
(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.
(D) Require the accessory dwelling units to comply with all of the following:
(i) The accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.
(ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.
(iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.
(iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.
(v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.
(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.
(vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.
(viii) Local building code requirements that apply to detached dwellings, as appropriate.
(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.
(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.
(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.
(III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).
(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.
(xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.
(3) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. *If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved*. A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.
(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.
(5) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.
(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed, including any owner-occupant requirement, except that a local agency may require that the property be used for rentals of terms longer than 30 days.
(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.
(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.
(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.
(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.
(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:
(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:
(i) 850 square feet.
(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.
(C) Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.
(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:
(1) The accessory dwelling unit is located within one-half mile walking distance of public transit.
(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.
(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.
(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
(5) When there is a car share vehicle located within one block of the accessory dwelling unit.
(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:
(A) One accessory dwelling unit ~~or~~ *and* one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:
(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.
(ii) The space has exterior access from the proposed or existing single-family dwelling.
(iii) The side and rear setbacks are sufficient for fire and safety.
(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.
(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:
(i) A total floor area limitation of not more than 800 square feet.
(ii) A height limitation of 16 feet.
(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.
(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.
(D) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.
(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.
(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.
(4) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.
(5) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.
(6) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).
(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.
(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.
(B) For purposes of this paragraph, “impact fee” has the same meaning as the term “fee” is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. “Impact fee” does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.
(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family home.
(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.
(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.
(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.
(2) (A) If the department finds that the local agency’s ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.
(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:
(i) Amend the ordinance to comply with this section.
(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.
(3) (A) If the local agency does not amend its ordinance in response to the department’s findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department’s findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.
(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.
(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.
(j) As used in this section, the following terms mean:
(1) “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. An accessory dwelling unit also includes the following:
(A) An efficiency unit.
(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(2) “Accessory structure” means a structure that is accessory and incidental to a dwelling located on the same lot.
(3) “Efficiency unit” has the same meaning as defined in Section 17958.1 of the Health and Safety Code.
(4) “Living area” means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.
(5) “Local agency” means a city, county, or city and county, whether general law or chartered.
(6) “Nonconforming zoning condition” means a physical improvement on a property that does not conform with current zoning standards.
(7) “Passageway” means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.
(8) “Proposed dwelling” means a dwelling that is the subject of a permit application and that meets the requirements for permitting.
(9) “Public transit” means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.
(10) “Tandem parking” means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.
(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.
(l) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.
(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.
(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2) below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:
(1) The accessory dwelling unit was built before January 1, 2020.
(2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.
(o) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.
(Becomes operative on January 1, 2025)

Section 65852.2 of the Government Code is amended to read (changes from January 1, 2021 statute noted in underline/italic):

65852.2.

(a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:
(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.
(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. These standards shall not include requirements on minimum lot size.
(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.
(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:
(i) The accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.
(ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.
(iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.
(iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.
(v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.
(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.
(vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.
(viii) Local building code requirements that apply to detached dwellings, as appropriate.
(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.
(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.
(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.
(III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).
(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.
(xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.
(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.
(3) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. *If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved*. A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.
(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.
(5) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.
(6) *(A)* This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed

accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or ~~imposed, including any owner-occupant requirement, except that~~ *imposed except that, subject to subparagraph (B),* a local agency may require *an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or* that the property be used for rentals of terms longer than 30 days.
(B) Notwithstanding subparagraph (A), a local agency shall not impose an owner-occupant requirement on an accessory dwelling unit permitted between January 1, 2020, to January 1, 2025, during which time the local agency was prohibited from imposing an owner-occupant requirement.
(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.
(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.
(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.
(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.
(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:
(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.
(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:
(i) 850 square feet.
(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.
(C) Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.
(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:
(1) The accessory dwelling unit is located within one-half mile walking distance of public transit.
(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.
(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.
(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
(5) When there is a car share vehicle located within one block of the accessory dwelling unit.
(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:
(A) One accessory dwelling unit ~~or~~ *and* one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:
(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not

more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.
(ii) The space has exterior access from the proposed or existing single-family dwelling.
(iii) The side and rear setbacks are sufficient for fire and safety.
(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.
(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:
(i) A total floor area limitation of not more than 800 square feet.
(ii) A height limitation of 16 feet.
(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.
(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.
(D) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.
(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.
(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.
(4) A local agency may require owner occupancy for either the primary dwelling or the accessory dwelling unit on a single-family lot, subject to the requirements of paragraph (6) of subdivision (a).
~~(4)~~ *(5)* A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.
~~(5)~~ *(6)* A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.
~~(6)~~ *(7)* Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.
(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).
(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.
(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.
(B) For purposes of this paragraph, “impact fee” has the same meaning as the term “fee” is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. “Impact fee” does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.
(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family ~~home.~~ *dwelling.*
(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the

Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.
(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.
(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.
(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.
(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:
(i) Amend the ordinance to comply with this section.
(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.
(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.
(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.
(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.
(j) As used in this section, the following terms mean:
(1) "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. An accessory dwelling unit also includes the following:
(A) An efficiency unit.
(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.
(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.
(3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.
(4) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.
(5) "Local agency" means a city, county, or city and county, whether general law or chartered.
(6) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.
(7) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.
(8) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.
(9) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.
(10) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.
(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.
(l) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit

applications for accessory dwelling units.
(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.
(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2) below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:
(1) The accessory dwelling unit was built before January 1, 2020.
(2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.
(o) This section shall ~~remain in effect only until January 1, 2025, and as of that date is repealed.~~ *become operative on January 1, 2025.*

Effective January 1, 2021, Section 4740 of the Civil Code is amended to read (changes noted in strikeout, underline/italics) (AB 3182 (Ting)):

4740.
(a) An owner of a separate interest in a common interest development shall not be subject to a provision in a governing document or an amendment to a governing document that prohibits the rental or leasing of any of the separate interests in that common interest development to a renter, lessee, or tenant unless that governing document, or amendment thereto, was effective prior to the date the owner acquired title to ~~his or her~~ *their* separate interest.
~~(b) Notwithstanding the provisions of this section, an owner of a separate interest in a common interest development may expressly consent to be subject to a governing document or an amendment to a governing document that prohibits the rental or leasing of any of the separate interests in the common interest development to a renter, lessee, or tenant.~~
~~(c)~~ *(b)* For purposes of this section, the right to rent or lease the separate interest of an owner shall not be deemed to have terminated if the transfer by the owner of all or part of the separate interest meets at least one of the following conditions:
(1) Pursuant to Section 62 or 480.3 of the Revenue and Taxation Code, the transfer is exempt, for purposes of reassessment by the county tax assessor.
(2) Pursuant to subdivision (b) of, solely with respect to probate transfers, or subdivision (e), (f), or (g) of, Section 1102.2, the transfer is exempt from the requirements to prepare and deliver a Real Estate Transfer Disclosure Statement, as set forth in Section 1102.6.
~~(d)~~ *(c)* Prior to renting or leasing ~~his or her~~ *their* separate interest as provided by this section, an owner shall provide the association verification of the date the owner acquired title to the separate interest and the name and contact information of the prospective tenant or lessee or the prospective tenant's or lessee's representative.
~~(e)~~ *(d)* Nothing in this section shall be deemed to revise, alter, or otherwise affect the voting process by which a common interest development adopts or amends its governing documents.
~~(f) This section shall apply only to a provision in a governing document or a provision in an amendment to a governing document that becomes effective on or after January 1, 2012.~~

Effective January 1, 2021 of the *Section 4741 is added to the Civil Code, to read (AB 3182 (Ting)):*

4741.
(a) An owner of a separate interest in a common interest development shall not be subject to a provision in a governing document or an amendment to a governing document that prohibits, has the effect of prohibiting, or unreasonably restricts the rental or leasing of any of the separate interests, accessory dwelling units, or junior accessory dwelling units in that common interest development to a renter, lessee, or tenant.
(b) A common interest development shall not adopt or enforce a provision in a governing document or amendment to a governing document that restricts the rental or lease of separate interests within a common interest to less than 25 percent of the separate interests. Nothing in this subdivision prohibits a common interest development from adopting or enforcing a provision authorizing a higher percentage of separate interests to be rented or leased.
(c) This section does not prohibit a common interest development from adopting and enforcing a provision in a

governing document that prohibits transient or short-term rental of a separate property interest for a period of 30 days or less.
(d) For purposes of this section, an accessory dwelling unit or junior accessory dwelling unit shall not be construed as a separate interest.
(e) For purposes of this section, a separate interest shall not be counted as occupied by a renter if the separate interest, or the accessory dwelling unit or junior accessory dwelling unit of the separate interest, is occupied by the owner.
(f) A common interest development shall comply with the prohibition on rental restrictions specified in this section on and after January 1, 2021, regardless of whether the common interest development has revised their governing documents to comply with this section. However, a common interest development shall amend their governing documents to conform to the requirements of this section no later than December 31, 2021.
(g) A common interest development that willfully violates this section shall be liable to the applicant or other party for actual damages, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars ($1,000).
(h) In accordance with Section 4740, this section does not change the right of an owner of a separate interest who acquired title to their separate interest before the effective date of this section to rent or lease their property.

Effective January 1, 2020, Section 65852.22 of the Government Code ~~is~~ was amended to read (AB 68 (Ting)):
65852.22.
(a) Notwithstanding Section 65852.2, a local agency may, by ordinance, provide for the creation of junior accessory dwelling units in single-family residential zones. The ordinance may require a permit to be obtained for the creation of a junior accessory dwelling unit, and shall do all of the following:
(1) Limit the number of junior accessory dwelling units to one per residential lot zoned for single-family residences with a single-family residence built, or proposed to be built, on the lot.
(2) Require owner-occupancy in the single-family residence in which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the structure or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.
(3) Require the recordation of a deed restriction, which shall run with the land, shall be filed with the permitting agency, and shall include both of the following:
(A) A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.
(B) A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this section.
(4) Require a permitted junior accessory dwelling unit to be constructed within the walls of proposed or existing single-family residence.
(5) Require a permitted junior accessory dwelling to include a separate entrance from the main entrance to the proposed or existing single-family residence.
(6) Require the permitted junior accessory dwelling unit to include an efficiency kitchen, which shall include all of the following:
(A) A cooking facility with appliances.
(B) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.
(b) (1) An ordinance shall not require additional parking as a condition to grant a permit.
(2) This subdivision shall not be interpreted to prohibit the requirement of an inspection, including the imposition of a fee for that inspection, to determine if the junior accessory dwelling unit complies with applicable building standards.
(c) An application for a permit pursuant to this section shall, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, be considered ministerially, without discretionary review or a hearing. The permitting agency shall act on the application to create a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family dwelling on the lot. If the permit application to create a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. A local agency may charge a fee to reimburse the local agency for costs incurred in connection with the issuance of a permit pursuant to this section.

(d) For purposes of any fire or life protection ordinance or regulation, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit. This section shall not be construed to prohibit a city, county, city and county, or other local public entity from adopting an ordinance or regulation relating to fire and life protection requirements within a single-family residence that contains a junior accessory dwelling unit so long as the ordinance or regulation applies uniformly to all single-family residences within the zone regardless of whether the single-family residence includes a junior accessory dwelling unit or not.
(e) For purposes of providing service for water, sewer, or power, including a connection fee, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit.
(f) This section shall not be construed to prohibit a local agency from adopting an ordinance or regulation, related to parking or a service or a connection fee for water, sewer, or power, that applies to a single-family residence that contains a junior accessory dwelling unit, so long as that ordinance or regulation applies uniformly to all single-family residences regardless of whether the single-family residence includes a junior accessory dwelling unit.
(g) If a local agency has not adopted a local ordinance pursuant to this section, the local agency shall ministerially approve a permit to construct a junior accessory dwelling unit that satisfies the requirements set forth in subparagraph (A) of paragraph (1) of subdivision (e) of Section 65852.2 and the requirements of this section.
(h) For purposes of this section, the following terms have the following meanings:
(1) “Junior accessory dwelling unit” means a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.
(2) “Local agency” means a city, county, or city and county, whether general law or chartered.

Effective January 1, 2020 Section 17980.12 ~~is~~ was added to the Health and Safety Code, immediately following Section 17980.11, to read (SB 13 (Wieckowski)):

17980.12.

(a) (1) An enforcement agency, until January 1, 2030, that issues to an owner of an accessory dwelling unit described in subparagraph (A) or (B) below, a notice to correct a violation of any provision of any building standard pursuant to this part shall include in that notice a statement that the owner of the unit has a right to request a delay in enforcement pursuant to this subdivision:
(A) The accessory dwelling unit was built before January 1, 2020.
(B) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.
(2) The owner of an accessory dwelling unit that receives a notice to correct violations or abate nuisances as described in paragraph (1) may, in the form and manner prescribed by the enforcement agency, submit an application to the enforcement agency requesting that enforcement of the violation be delayed for five years on the basis that correcting the violation is not necessary to protect health and safety.
(3) The enforcement agency shall grant an application described in paragraph (2) if the enforcement determines that correcting the violation is not necessary to protect health and safety. In making this determination, the enforcement agency shall consult with the entity responsible for enforcement of building standards and other regulations of the State Fire Marshal pursuant to Section 13146.
(4) The enforcement agency shall not approve any applications pursuant to this section on or after January 1, 2030. However, any delay that was approved by the enforcement agency before January 1, 2030, shall be valid for the full term of the delay that was approved at the time of the initial approval of the application pursuant to paragraph (3).
(b) For purposes of this section, “accessory dwelling unit” has the same meaning as defined in Section 65852.2.
(c) This section shall remain in effect only until January 1, 2035, and as of that date is repealed.

GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 4, ARTICLE 2
AB 587 Accessory Dwelling Units

Effective January 1, 2020 Section 65852.26 ~~is~~ was added to the Government Code, immediately following Section 65852.25, to read (AB 587 (Friedman)):

65852.26.

(a) Notwithstanding clause (i) of subparagraph (D) of paragraph (1) of subdivision (a) of Section 65852.2, a local agency may, by ordinance, allow an accessory dwelling unit to be sold or conveyed separately from the primary residence to a qualified buyer if all of the following apply:

(1) The property was built or developed by a qualified nonprofit corporation.

(2) There is an enforceable restriction on the use of the land pursuant to a recorded contract between the qualified buyer and the qualified nonprofit corporation that satisfies all of the requirements specified in paragraph (10) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code.

(3) The property is held pursuant to a recorded tenancy in common agreement that includes all of the following:

(A) The agreement allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling each qualified buyer occupies.

(B) A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the property if the buyer desires to sell or convey the property.

(C) A requirement that the qualified buyer occupy the property as the buyer’s principal residence.

(D) Affordability restrictions on the sale and conveyance of the property that ensure the property will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.

(4) A grant deed naming the grantor, grantee, and describing the property interests being transferred shall be recorded in the county in which the property is located. A Preliminary Change of Ownership Report shall be filed concurrently with this grant deed pursuant to Section 480.3 of the Revenue and Taxation Code.

(5) Notwithstanding subparagraph (A) of paragraph (2) of subdivision (f) of Section 65852.2, if requested by a utility providing service to the primary residence, the accessory dwelling unit has a separate water, sewer, or electrical connection to that utility.

(b) For purposes of this section, the following definitions apply:

(1) “Qualified buyer” means persons and families of low or moderate income, as that term is defined in Section 50093 of the Health and Safety Code.

(2) “Qualified nonprofit corporation” means a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section 214.15 of the Revenue and Taxation Code for properties intended to be sold to low-income families who participate in a special no-interest loan program.

CIVIL CODE: DIVISION 4, PART 5, CHAPTER 5, ARTICLE 1
AB 670 Accessory Dwelling Units

Effective January 1, 2020, Section 4751 ~~is~~ was added to the Civil Code, to read (AB 670 (Friedman)):

4751.

(a) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a planned development, and any provision of a governing document, that either effectively prohibits or unreasonably restricts the construction or use of an accessory dwelling unit or junior accessory dwelling unit on a lot zoned for single-family residential use that meets the requirements of Section 65852.2 or 65852.22 of the Government Code, is void and unenforceable.

(b) This section does not apply to provisions that impose reasonable restrictions on accessory dwelling units or junior accessory dwelling units. For purposes of this subdivision, “reasonable restrictions” means restrictions that do not unreasonably increase the cost to construct, effectively prohibit the construction of, or extinguish the ability

to otherwise construct, an accessory dwelling unit or junior accessory dwelling unit consistent with the provisions of Section 65852.2 or 65852.22 of the Government Code.

GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 3, ARTICLE 10.6
AB 671 Accessory Dwelling Units

Effective January 1, 2020, Section 65583(c)(7) of the Government Code ~~is~~ was added to read (sections of housing element law omitted for conciseness) (AB 671 (Friedman)):

65583(c)(7).

Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent, as defined in Section 50053 of the Health and Safety Code, for very low, low-, or moderate-income households. For purposes of this paragraph, “accessory dwelling units” has the same meaning as “accessory dwelling unit” as defined in paragraph (4) of subdivision (i) of Section 65852.2.

Effective January 1, 2020, Section 50504.5 ~~is~~ was added to the Health and Safety Code, to read (AB 671 (Friedman)):

50504.5.

(a) The department shall develop by December 31, 2020, a list of existing state grants and financial incentives for operating, administrative, and other expenses in connection with the planning, construction, and operation of an accessory dwelling unit with affordable rent, as defined in Section 50053, for very low, low-, and moderate-income households.
(b) The list shall be posted on the department’s internet website by December 31, 2020.
(c) For purposes of this section, “accessory dwelling unit” has the same meaning as defined in paragraph (4) of subdivision (i) of Section 65852.2 of the Government Code.

Attachment 2: State Standards Checklist

YES/NO	STATE STANDARD*	GOVERNMENT CODE SECTION
	Unit is not intended for sale separate from the primary residence and may be rented.	65852.2(a)(1)(D)(i)
	Lot is zoned for single-family or multifamily use and contains a proposed, or existing, dwelling.	65852.2(a)(1)(D)(ii)
	The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure, or detached from the proposed or existing dwelling and located on the same lot as the proposed or existing primary dwelling.	65852.2(a)(1)(D)(iii)
	Increased floor area of an attached accessory dwelling unit does not exceed 50 percent of the existing primary dwelling but shall be allowed to be at least 800/850/1000 square feet.	65852.2(a)(1)(D)(iv), (c)(2)(B) & C)
	Total area of floor area for a detached accessory dwelling unit does not exceed 1,200 square feet.	65852.2(a)(1)(D)(v)
	Passageways are not required in conjunction with the construction of an accessory dwelling unit.	65852.2(a)(1)(D)(vi)
	Setbacks are not required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.	65852.2(a)(1)(D)(vii)
	Local building code requirements that apply to detached dwellings are met, as appropriate.	65852.2(a)(1)(D)(viii)
	Local health officer approval where a private sewage disposal system is being used, if required.	65852.2(a)(1)(D)(ix)
	Parking requirements do not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on an existing driveway.	65852.2(a)(1)(D)(x)(I

Attachment 3: Bibliography

ACCESSORY DWELLING UNITS: CASE STUDY (26 pp.)

By the United States Department of Housing and Urban Development, Office of Policy Development and Research. (2008)

Introduction: Accessory dwelling units (ADUs) — also referred to as accessory apartments, ADUs, or granny flats — are additional living quarters on single-family lots that are independent of the primary dwelling unit. The separate living spaces are equipped with kitchen and bathroom facilities and can be either attached or detached from the main residence. This case study explores how the adoption of ordinances, with reduced regulatory restrictions to encourage ADUs, can be advantageous for communities. Following an explanation of the various types of ADUs and their benefits, this case study provides examples of municipalities with successful ADU legislation and programs. Section titles include: History of ADUs; Types of Accessory Dwelling Units; Benefits of Accessory Dwelling Units; and Examples of ADU Ordinances and Programs.

THE MACRO VIEW ON MICRO UNITS (46 pp.)

By Bill Whitlow, et al. – Urban Land Institute (2014)
Library Call #: H43 4.21 M33 2014

The Urban Land Institute Multifamily Housing Councils were awarded a ULI Foundation research grant in fall 2013 to evaluate from multiple perspectives the market performance and market acceptance of micro and small units.

SECONDARY UNITS AND URBAN INFILL: A Literature Review (12 pp.)

By Jake Wegmann and Alison Nemirow (2011)
UC Berkeley: IURD
Library Call # D44 4.21 S43 2011

This literature review examines the research on both infill development in general, and secondary units in particular, with an eye towards understanding the similarities and differences between infill as it is more traditionally understood – i.e., the development or redevelopment of entire parcels of land in an already urbanized area – and the incremental type of infill that secondary unit development constitutes.

RETHINKING PRIVATE ACCESSORY DWELLINGS (5 pp.)

By William P. Macht. Urbanland online. (March 6, 2015)
Library Location: Urbanland 74 (1/2) January/February 2015, pp. 87-91.

One of the large impacts of single-use, single-family detached zoning has been to severely shrink the supply of accessory dwellings, which often were created in or near primary houses. Detached single-family dwelling zones—the largest housing zoning category—typically preclude more than one dwelling per lot except under stringent regulation, and then only in some jurisdictions. Bureaucratically termed “accessory dwelling units” that are allowed by some jurisdictions may encompass market-derived names such as granny flats, granny cottages, mother-in-law suites, secondary suites, backyard cottages, casitas, carriage flats, sidekick houses, basement apartments, attic apartments, laneway houses, multigenerational homes, or home-within-a-home.

[Regulating ADUs in California: Local Approaches & Outcomes] (44 pp.)

By Deidra Pfeiffer
Terner Center for Housing and Innovation, UC Berkeley

Accessory dwelling units (ADU) are often mentioned as a key strategy in solving the nation's housing problems, including housing affordability and challenges associated with aging in place. However, we know little about whether formal ADU practices—such as adopting an ordinance, establishing regulations, and permitting—contribute to these goals. This research helps to fill this gap by using data from the Terner California Residential Land Use Survey and the U.S. Census Bureau to understand the types of communities engaging in different kinds of formal ADU practices in California, and whether localities with adopted ordinances and less restrictive regulations have more frequent applications to build ADUs and increasing housing affordability and aging in place. Findings suggest that three distinct approaches to ADUs are occurring in California: 1) a more restrictive approach in disadvantaged communities of color, 2) a moderately restrictive approach in highly advantaged, predominately White and Asian communities, and 3) a less restrictive approach in diverse and moderately advantaged communities. Communities with adopted ordinances and less restrictive regulations receive more frequent applications to build ADUs but have not yet experienced greater improvements in housing affordability and aging in place. Overall, these findings imply that 1) context-specific technical support and advocacy may be needed to help align formal ADU practices with statewide goals, and 2) ADUs should be treated as one tool among many to manage local housing problems.

[ADU Update: Early Lessons and Impacts of California's State and Local Policy Changes] (8 p.)

By David Garcia (2017)
Terner Center for Housing and Innovation, UC Berkeley

As California's housing crisis deepens, innovative strategies for creating new housing units for all income levels are needed. One such strategy is building Accessory Dwelling Units (ADUs) by private homeowners. While large scale construction of new market rate and affordable homes is needed to alleviate demand-driven rent increases and displacement pressures, ADUs present a unique opportunity for individual homeowners to create more housing as well. In particular, ADUs can increase the supply of housing in areas where there are fewer opportunities for larger-scale developments, such as neighborhoods that are predominantly zoned for and occupied by single-family homes.
In two of California's major metropolitan areas -- Los Angeles and San Francisco -- well over three quarters of the total land area is comprised of neighborhoods where single-family homes make up at least 60 percent of the community's housing stock. Across the state, single-family detached units make up 56.4 percent of the overall housing stock. Given their prevalence in the state's residential land use patterns, increasing the number of single-family homes that have an ADU could contribute meaningfully to California's housing shortage.

[Jumpstarting the Market for Accessory Dwelling Units: Lessons Learned from Portland, Seattle and Vancouver] (29 pp.)

By Karen Chapple et al (2017)
Terner Center for Housing and Innovation, UC Berkeley

Despite government attempts to reduce barriers, a widespread surge of ADU construction has not materialized. The ADU market remains stalled. To find out why, this study looks at three cities in the Pacific Northwest of the United States and Canada that have seen a spike in construction in recent years: Portland, Seattle, and Vancouver. Each city has adopted a set of zoning reforms, sometimes in combination with financial incentives and outreach programs, to spur ADU construction. Due to these changes, as well as the acceleration of the housing crisis in each city, ADUs have begun blossoming.

Accessory Dwelling Units as Low-Income Housing: California's Faustian Bargain (37 pp.)

By Darrel Ramsey-Musolf (2018)
University of Massachusetts Amherst, ScholarWorks@UMass Amherst

In 2003, California allowed cities to count accessory dwelling units (ADU) towards low-income housing needs. Unless a city's zoning code regulates the ADU's maximum rent, occupancy income, and/or effective period, then the city may be unable to enforce low-income occupancy. After examining a stratified random sample of 57 low-, moderate-, and high-income cities, the high-income cities must proportionately accommodate more low-income needs than low-income cities. By contrast, low-income cities must quantitatively accommodate three times the low-income needs of high-income cities. The sample counted 750 potential ADUs as low-income housing. Even though 759 were constructed, no units were identified as available low-income housing. In addition, none of the cities' zoning codes enforced low-income occupancy. Inferential tests determined that cities with colleges and high incomes were more probable to count ADUs towards overall and low-income housing needs. Furthermore, a city's count of potential ADUs and cities with high proportions of renters maintained positive associations with ADU production, whereas a city's density and prior compliance with state housing laws maintained negative associations. In summary, ADUs did increase local housing inventory and potential ADUs were positively associated with ADU production, but ADUs as low-income housing remained a paper calculation.

"It's no wonder that truth is stranger than fiction. Fiction has to make sense." ~ Mark Twain

December 5, 2022

Dear Neighbors,

We are the owners of 432 Monarch Bay, and we invite you to drive down the streets in the mall to fully understand and appreciate the construction that is occurring. We are writing in response to the emails that have been distributed regarding our home rebuild project.

Contrary to what has been implied in the ACC emails, we have been working with the Architectural Committee since our first complete and detailed submittal in October 2020. We hired our architect in July 2020 with the hopes of being able to begin building in mid 2021. Our desire was and still is to work with the ACC and get their approval to build our family home. We built our current family home in Dana Point in 2005 and we had no delays; our home was completed within the year of our plan submittal. Our original detailed and extensive plans for 432 were submitted over 2 years ago and included a subterrain walkout with a private room for my elderly father and our family. We designed the **subterrain walkout** to be the least impactful to our neighbors across the street.

You will see our current home at 432 Monarch has a flat roof with only 2"x 4" wood planks as the ceiling/roof and there is no insulation. The ceiling height is only 6'-8" in some areas. One half of our home's height is currently below street grade. We need an increase in height to keep the entrance of our home at street level. It is the lowest height in the entire neighborhood, other mall homes have been allowed to expand in height on both sides of the street. The ACC quickly rejected our **new build plans** without review or discussion due to our need for a height variance. We appealed to the board who also rejected our plans without review. They would not consider a minor height variance on a new build. **The fact that we can get a height increase on a remodel but not on a rebuild is illogical and it is the cause for our need of an ADU.**

We wanted to continue working with the ACC for approval. Our only choice left was to design a **remodel** and once again ask for a small height variance. We redesigned our home along with the request for an increase in height. After 11 months of working with the ACC on a remodel our plans **were approved with the height increase so our home entrance would not be below the street grade. Due to current city guidelines, our building a subterranean walkout would not be allowed on a remodel. So we would not have a space for my father and family on a remodel.**

Our need to add a 2nd story ADU would not be necessary if our original plans were not turned down by the ACC. There are currently many other homes with ADU units in Monarch Bay. Our home project is the first time the ACC has sent emails advising neighbors to contact the city to dispute the plans. Contrary to the information distributed about our family home we have no intention of renting the ADU unit separately, we need a separate living space for our father and family.

Our original subterranean plans also included a request to keep our existing patio. Due to the current definition of lot coverage, our existing patio would now need a variance. The subterranean walkout we designed to accommodate the neighbors across the street, causes the existing patio to be more than 30" above grade and therefore it would have to be calculated in our lot % coverage, according to current architectural guidelines. This is a unique situation affecting only mall owners on our side of the street.

In June 2022 – We submitted to the city our ACC approved plans for a remodel along with plans for an attached second story ADU with an additional attached ADU mandatory garage. ***<u>We followed the State mandated ADU Guidelines for a second dwelling</u>***, allowing for my elderly father and other family members to have accessible access to our home. ***<u>The City of Dana Point accepted our ADU plans understanding we met the State Mandated Requirements and knowing our design for the alternative subterranean walkout for our ADU needs was rejected by the Monarch ACC.</u>***

July 8, 2022 – We submitted the ADU Unit with the ACC approved remodel plans to the Monarch ACC committee. We were rejected again without a discussion.

<u>OUR OPTIONS</u>	**NEW SUBTERRRANEAN HOME BUILD**	**REMODEL**
ACC Allows us 1' Height Increase	**NO**	**YES**
SUBTERRAIN WALKOUT ALLOWED PER CITY	**YES**	**NO**
LIVING QUARTERS FOR FATHER & FAMILY	**YES**	**YES W/ADU**
ALLOWED TO KEEP OUR EXSISTING PATIO PER ACC	**NO**	**YES**

Driving down our street in the mall you will quickly see the truth and the fiction of the disparity between what the ACC has approved for our neighbors across the street. There is no dispute; our side of the street is making sacrifices for our neighbors across the street who live along Pacific Coast Highway. We as neighbors are asking for fair and equitable treatment under the law. We are asking for variances that affect only our side of the street, just as they have made special allowances for the homes that back up to PCH. We have taken 2 ½ years to respond honestly, fairly, and quickly to their concerns. We ask that you evaluate the circumstances before making a decision that affects our family home.

Thank you for your time,
Tim and Mary McFadden

PUBLIC NOTICE

CITY OF DANA POINT
NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN THAT a public hearing will be held by the Planning Commission of the City of Dana Point to consider the following:

Coastal Development Permit CDP22-0017 and Conditional Use Permit CUP22-0007: A request to allow the addition and remodel of an existing one (1) story, single-family dwelling, which includes the construction of a second story, one (1) bedroom, two (2) bath, 743 square foot, second dwelling unit (referred to as an "accessory dwelling unit (ADU)" per Government Code Section 65852.2) and an expansion of the existing two (2) car garage to accommodate three (3) vehicles, located within the City's Coastal Zone, at 432 Monarch Bay Drive.

Section 9.07.210 of the City's Local Coastal Program (LCP) states that a Second Dwelling Unit requires a CUP and outlines specific development standards including the requirement of an additional covered parking stall, notwithstanding the Government Code's waiver of parking for ADU's based on proximity to public transportation.

Project Numbers:	CDP22-0017 & CUP22-0007
Project Location:	432 Monarch Bay
Applicant:	Phil Edmondson, Pacific Coast Architects
Owner:	Timothy and Mary McFadden
Environmental:	Pursuant to the California Environmental Quality Act (CEQA), the project is categorically exempt per Section 15301 of the CEQA Guidelines (Class 1 – Existing Facilities) because the project consists of additions to an existing SFD.
Hearing Date:	Monday December 12, 2022
Hearing Time:	6:00 p.m. (or as soon thereafter as possible)
Hearing Location:	33282 Golden Lantern, Dana Point, CA 92629 (Dana Point City Hall)

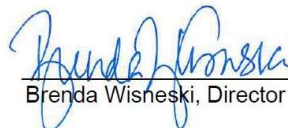
All persons either favoring or opposing this proposal are invited to present their views on the above referenced project to the Commission at this hearing.

Note: This project may be appealed to the City Council. If you challenge the action taken on this proposal in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Dana Point prior to the public hearing.

For further information, please contact Danny Giometti, Senior Planner (949-248-3568) at the City of Dana Point, Community Development Department, 33282 Golden Lantern, Suite 209, Dana Point, CA 92629.

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss AFFIDAVIT OF POSTING
CITY OF DANA POINT)

I, Brenda Wisneski, Director of the Community Development Department of the City of Dana Point, do hereby certify that on November 28, 2022, I caused the above notice to be posted in four places within the City of Dana Point, to wit: City Hall, the Dana Point Post Office, the Capistrano Beach Post Office, and the Dana Point Library.



Brenda Wisneski, Director

DRAFT