

CITY OF DANA POINT
AGENDA REPORT

Reviewed By:	
DH	<u>X</u>
CM	<u>X</u>
CA	<u>X</u>

DATE: SEPTEMBER 3, 2024

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: BRENDA WISNESKI, COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: CONSIDERATION OF FINDINGS BY THE STATE HOUSING AND COMMUNITY DEVELOPMENT RELATED TO ORDINANCE 23-06 (ACCESSORY DWELLING UNITS)

RECOMMENDED ACTION:

That the City Council adopt a Resolution pursuant to Government Code Section 66326 finding Ordinance 23-06 complies with the State's ADU Laws, and/or provide direction to Staff regarding possible amendments to Ordinance 23-06.

Specifically, the City Council may consider one of the following actions:

- (1) adopt the Resolution determining Ordinance 23-06 complies with the State ADU Laws as provided in Government Code Section 66326, or
- (2) direct staff to amend Ordinance 23-06, or
- (3) adopt the Resolution and notwithstanding finding Ordinance 23-06 complies with the State ADU Laws, provide direction to Staff regarding possible amendments to address issues identified by HCD.

BACKGROUND:

Since 2019, state law included directives intended to increase the supply of housing by facilitating the construction of Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs). The following lists the City's efforts to adopt a state compliant ADU ordinance:

- August 23, 2021, the City Council adopts Ordinance No. 21-06 (ADU Ordinance) revising its existing ADU regulations to comply with state ADU law.
- January 13, 2023, HCD provides findings recommending revisions to the ADU Ordinance.

- July 18, 2023, City amends the ADU Ordinance, by adopting Ordinance 23-06 and incorporating Resolution 23-06-20-01 which addressed HCD's comments and finding the ADU Ordinance complies with the State ADU Laws.
- June 28, 2024, HCD submits comments and findings related to Ordinance 23-06 requiring the City to either amend Ordinance 23-06 or adopt a resolution with findings pursuant to Government Code 66326 that the Ordinance complies with State ADU Law and addressing HCD's comments. (Supporting Document B)

DISCUSSION:

Staff believes the City's ADU Ordinance (Ordinance 23-06) adopted on July 18, 2024, complies with State Law. Accordingly, Staff recommends that the Council adopt the accompanying resolution (Action Document A) pursuant to Government Code 66326.

Notwithstanding the above, Staff believes that a number of the comments and suggestions in HCDs June 28, 2024, letter are worth considering. Most of HCD's comments, if incorporated into a revised ordinance, would not materially change the City's ADU Ordinance, and were offered for the purpose of providing clarity. Therefore suggested revisions could be incorporated into the ADU Ordinance to satisfy HCDs request, which would both accommodate HCD and result in avoiding needless controversy on issues where the City has no meaningful disagreement.

If the City Council directs that amendments to the ADU Ordinance should be considered, staff will first present the draft amendment to the Planning Commission for its consideration. Following noticed public hearing(s), the Planning Commission will make a recommendation that will be forwarded to the City Council.

NOTIFICATION AND FOLLOW-UP:

HCD will be notified of the City Council action prior to September 6, 2024.

STRATEGIC PLAN IMPLEMENTATION:

The project is in keeping with Strategic Goal 3, 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:

None.

ACTION DOCUMENTS:

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A. [Resolution](#)..... 4

SUPPORTING DOCUMENTS:

B. [HCD Issues A-X \(Exhibit A to Resolution\)](#) 21

ACTION DOCUMENT A**Resolution No. XX-XX****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT,
CALIFORNIA, ADOPTING ORDINANCE 23-06 WITHOUT CHANGES AND FINDING
SUCH ORDINANCE COMPLIES WITH STATE LAW**

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 Accessory Dwelling Units (“ADUs”) and Junior Accessory Dwelling Units (“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, former Government Code sections 65852.2 and 65852.22 authorized cities to act by ordinance to provide for the creation and regulation of ADUs and JADUs; and

WHEREAS, on or about August 23, 2021 the City of Dana Point (“City”) adopted Ordinance No. 21-06 (the “ADU Ordinance”), and thereby revised its existing ADU regulations to comply with Government Code Sections 65852.2 and 65852.22; and

WHEREAS, within sixty (60) days of adopting its ADU Ordinance, the City submitted its ADU Ordinance to the Department of Housing and Community Development (“HCD”) for review pursuant to former Government Code section 65852.2(h); and

WHEREAS, On January 13, 2023 HCD responded to the City with a letter making various findings and recommending revisions to the City’s ADU Ordinance; and

WHEREAS, within thirty (30) days of the receipt of the aforementioned correspondence, the City notified HCD that it intended to amend its ADU Ordinance pursuant to former Government Code 65852.2(h)(2); and

WHEREAS, on July 18, 2023 the City Council adopted Ordinance 23-06 amending the ADU Ordinance (the “Amended ADU Ordinance”), which amendment incorporated Resolution 23-06-20-01 addressing HCD’s comments and findings with respect to those provisions of the ADU Ordinance not amended, and finding such provisions complied with the State ADU Laws, as set forth in former Government Code Section 65852.2; and

WHEREAS, within sixty (60) days of adopting the Amended ADU Ordinance, the City submitted the Amended ADU Ordinance to HCD for review pursuant to former Government Code section 65852.2(h); and

WHEREAS, On June 28, 2024 HCD responded to the City with a letter making various findings and recommending revisions to the Amended ADU Ordinance; and

WHEREAS, HCD authorized an extension of the 30 day period within which the City is otherwise required to respond to its June 28, 2024 correspondence to and including September 6, 2024; and

WHEREAS, Since adoption of the ADU Ordinance by the City the Legislature has made various amendments to the State ADU Laws, including by the provisions of Senate Bill 477 (effective March 25, 2024), which renumbered the State ADU Laws that are now located at Government Code section 66310, *et. seq.*; and

WHEREAS, the City Council finds that the Amended ADU Ordinance complies with the State ADU Laws, as amended, and accordingly as set forth in Government Code Section 66326, adopts this Resolution by which to re-adopt the Amended ADU Ordinance without changes along with findings explaining the reason the Amended ADU Ordinance complies with Article 2, of Title 7, Division 1, Chapter 13, Sections 66314-66332 of the Government Code.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DANA POINT DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. Attached hereto as Exhibit “A” is true and correct copy of HCD’s June 28, 2024 correspondence, that has been modified only to identify the issues raised by HCD in such correspondence as “HCD Issues A-X.” Exhibit A has not been modified as to its substance, and the issues raised by HCD in its correspondence are highlighted in yellow, and contain the language “HCD Issue,” followed by a corresponding letter (A-X). As set forth in detail below, the findings contained in this Resolution are in response to each HCD Issue raised in its June 28, correspondence.

SECTION 2. Pursuant to Government Code 66326, the City Council finds that the Amended ADU Ordinance, Ordinance 23-06, complies with the State ADU Laws, as they have been amended, and hereby re-adopts that Ordinance by this Resolution without change, and finds that any position of HCD’s correspondence asserting the Ordinance is not in compliance with the State ADU Laws is incorrect, for each of the reasons set forth herein.

SECTION 3. With respect to HCD Issue A, the City Council makes the following findings in accordance with Government Code § 66326:

- A. HCD has suggested a clarification to the Amended ADU Ordinance to clarify that so-called “garage conversions” are attached ADUs, as that term is defined by the State ADU Laws.
- B. The Amended ADU Ordinance complies with the State ADU Laws in that it already defines garage conversions as attached ADUs.
- C. In addition, this issue was already addressed in the City Council’s findings set forth in the Amended ADU Ordinance, and Resolution 23-06-20-01 which is incorporated therein, thus bringing the Amended ADU Ordinance into compliance with the State ADU Laws in connection with this issue, and nothing in the State

ADU Laws authorizes HCD to supplant the City Council's legislative powers in connection with its adoption of Resolution 23-06-20-01.

SECTION 4: With respect to HCD Issue B, the City Council makes the following findings in accordance with Government Code § 66326:

- A. HCD asserts the Amended ADU Ordinance improperly includes a definition of the term "existing" structure or dwelling units in connection with certain ADUs.
- B. The Amended ADU Ordinance complies with the State ADU Laws in connection with this issue. HCD's position is one of statutory interpretation, and it is not authorized to make binding interpretations of the State ADU Laws. Moreover, its interpretation is non-sensical in that a basic rule of statutory interpretation is that meaning must be given to every provision of a statute. The State ADU Laws, including specifically Government Code Section 66323, use the terms "existing" and "proposed" in connection with dwellings and structures, and contains different provisions relating to each. The Council finds that these terms would have no meaning under HCD's interpretation, and the only reasonable meaning attributable to them is "existing" as of the time the relevant State ADU Laws were adopted. Hence, the Amended ADU Ordinance complies with the State ADU Laws in connection with Issue B.

SECTION 5: With respect to HCD Issue C the City Council makes the following findings in accordance with Government Code § 66326:

- A. HCD asserts the Amended ADU Ordinance improperly includes a definition of the term "existing" structure or dwelling units in connection with certain ADUs.
- B. The Amended ADU Ordinance complies with the State ADU Laws in connection with this issue. HCD's position is one of statutory interpretation, and it is not authorized to make binding interpretations of the State ADU Laws. Moreover, its interpretation is non-sensical in that a basic rule of statutory interpretation is that meaning must be given to every provision of a statute. The State ADU Laws, including specifically Government Code Section 66323, use the terms "existing" and "proposed" in connection with dwellings and structures, and contains different provisions relating to each. The Council finds that these terms would have no meaning under HCD's interpretation, and the only reasonable meaning attributable to them is "existing" as of the time the relevant State ADU Laws were adopted. Hence, the Amended ADU Ordinance complies with the State ADU Laws in connection with Issue C.

SECTION 6: With respect to HCD Issue D the City Council makes the following findings in accordance with Government Code § 66326:

- A. HCD asserts the Amended ADU Ordinance does not contain a provision to comply with a State Law amendment adopted after the Amended ADU Ordinance was

adopted. Specifically, it asserts the Amended ADU Ordinance must be amended to provide that an ADU constructed prior to 2018 without permits need not necessarily comply with the Amended ADU Ordinance.

B.

C. The Amended ADU Ordinance complies with the State ADU Laws in connection with this issue. In adopting the Amended ADU Ordinance, the City included a catch all provision, aimed at preventing the City from having to continually amend its ADU Ordinance each time the State Law is amended (which has frequently occurred). Accordingly, Section 9.07.210(C)(1) of the Amended ADU Ordinance was created to enable the City to determine if provisions of its ADU laws are preempted by the ever changing State ADU Laws. The City, applying this provision, interprets the Amended ADU Ordinance to already read in the manner addressed in HCD Issue D.

SECTION 7: With respect to HCD Issue E, the City Council makes the following findings in accordance with Government Code § 66326:

A. HCD asserts the Amended ADU Ordinance is contrary to State Law because of requirements for a deed restriction related to three specific issues, and asserts the deed restriction is a standard for development of an ADU which exceeds the standards permitted by the State ADU Laws.

B. The Amended ADU Ordinance complies with the State ADU Laws in connection with this issue.

C. First, deed restrictions are not standards imposed as a condition of development on an ADU. Rather, they are enforcement tools which are authorized by other State Laws applicable to all dwellings, including ADUs. In this regard, other State Laws permit the City to regulate short term rentals, and already require compliance with State Law in connection with the sale of property. The deed restriction required by the Amended ADU Ordinance in connection with these two issues, thus complies with State Law.

D. As it relates to the requirement for a deed restriction related to owner-occupancy following January 1, 2025, this issue is another example of the application of the City's catch all provision in Section 9.07.210(C)(1) of the Amended ADU Ordinance. At the time the Amended ADU Ordinance was adopted, such provision was permitted by and consistent with the State ADU Laws, and in particular, with HCD's ADU Guidebook. However, subsequent amendments to such laws, e.g., Government Code 66315, now makes clear that a city would be preempted from imposing such a requirement. The City, applying Section 9.07.210(C)(1), interprets the Amended ADU Ordinance to already read in the manner addressed in HCD Issue E.

SECTION 8: With respect to HCD Issue F, the City Council makes the following findings in accordance with Government Code § 66326:

- A. HCD asserts the Amended ADU Ordinance may not apply underlying development standards applicable in a zoning district or overlay district if they are more stringent than or conflict with the State ADU Laws.

The Amended ADU Ordinance complies with the State ADU Laws in connection with this issue. In adopting the Amended ADU Ordinance the City included a catch all provision, recognizing State Law has been subjected to continuing amendments, and seeking a solution so as to not be continually having to amend its own ADU Ordinance. Accordingly, Section 9.07.210(C)(1) of the Amended ADU Ordinance was created to enable the City to determine if provisions of its ADU laws are preempted by the ever changing State ADU Laws. The City, applying this provision, interprets the Amended ADU Ordinance to already read in the manner addressed in HCD Issue F.

SECTION 9: With respect to HCD Issue G, the City Council makes the following findings in accordance with Government Code § 66326:

- A. HCD asserts the Amended ADU Ordinance does not comply with the law because it does not permit the total number of ADU/JADU's on a property as purportedly required by Government Code Section 66323 (formerly Government Code Section 65852.2(e)).
- B. This issue was already addressed in the City Council's findings set forth in the Amended ADU Ordinance, and Resolution 23-06-20-01 which is incorporated therein, thus bringing the Amended ADU Ordinance into compliance with the State ADU Laws in connection with this issue, and nothing in the State ADU Laws authorizes HCD to supplant the City Council's legislative powers in connection with its adoption of Resolution 23-06-20-01.
- C. The City Council finds that HCD's position that cities are required to approve multiple mandatory ADUs on one parcel is not supported by State Law for each of the following reasons.
 - a. First, the plain language of Government Code section 66323 does not require cities to approve multiple mandatory ADUs on a single parcel, in that the statute does not require "all" of four types of mandatory ADUs to be approved. It also does not provide that some combinations (ex: A and B or C and D) must be approved. Rather, the plain language of Section 66323 is permissive. It directs that cities must approve "any" of the following types of mandatory ADUs. (*Halbert's Lumber, Inc. v. Lucky Stores* (1992) 6 Cal.App.4th 1233, 1238 ["There is order in the most fundamental rules of statutory interpretation if we want to find it. The key is applying those rules in *proper sequence*. First, a court should examine the actual language of the statute."], *emph. in original.*)

- b. Second, even if the language of the statute was unclear (and it is not), there is nothing in the legislative history related to the State Laws regulating ADUs that suggests that the legislature intended to require cities to approve multiple mandatory ADUs on one parcel. (*Ibid.* [“But if the meaning of the words is not clear, courts must take the second step and refer to the legislative history.”].)
- c. Third, even though HCD has not adopted any official guidelines related to ADUs that comply with the Administrative Procedures Act (Gov. Code § 11340), it did publish an “Accessory Dwelling Unit Handbook” in September 2020 which provided the following guidance with respect to mandatory ADUs: “The four above categories *are not required* to be combined. For example, local governments are not to allow (a) and (b) together or (c) and (d) together.” (ADU Handbook (Sept. 2020), p. 14, *emph. added*) In other words, as of September 2020, HCD’s own interpretation of the provisions related to mandatory ADUs concluded that cities were not required to approved multiple mandatory ADUs on a single parcel.
- d. Notwithstanding the fact that the plain language of the State Law on this issue has not changed, in July of 2022, HCD published an “updated” “Accessory Dwelling Unit Handbook” which modified its interpretation slightly to provide as follows: “The above four categories *may* be combined. For example, local governments must allow (a) and (b) together or (c) and (d) together.” (ADU Updated Handbook (July 2022), p. 20). HCD’s “revised” interpretation forms the basis of HCD Issue G.
- e. HCD’s “revised” interpretation related to multiple mandatory ADUs is not consistent with the plain language of Government Code 66323 (formerly Section 65852.2(e)), and is equally not supported by the legislative history of the State Laws related to ADUs. Moreover, HCD’s purported ability to change its “interpretations” of State Law without any public notice, public input, public hearing, or statutory authority is precisely the type of underground regulations that the Administrative Procedures Act sought to eliminate; an Act which HCD has not made any effort to comply with.
- f. On May 2, 2023, City Staff met with seven (7) staff members at HCD (Shannon West, David Garza, Jamie Candelaria, Jay Cross, Melinda Coy, Brian Heaton, and Mike Van Gorden) to discuss HCD’s January 12, 2023 correspondence, and in particular, HCD’s change in interpretation on what was then HCD Issue 3B, which is identical to its current Issue G. At that meeting, HCD Staff confirmed that its interpretation had changed, but failed to provide any authority for the change. HCD Staff also provided conflicting views of what combination of mandatory ADUs must be approved by cities. City Staff asked HCD Staff to provide it with written documentation of its change in interpretation, and any legal authority supporting the change. Although HCD Staff agreed to provide the City with such documentation, to date, the City has not received any further correspondence from HCD on this Issue.

- g. As such, for all of the foregoing reasons, the City Council finds that HCD's "revised" interpretation that State Law requires cities to approve multiple mandatory ADUs on one parcel conflicts with the plain language of the statute, is wholly unsupported by legislative history, and conflicts with HCD's own interpretation of the law. As such, the City finds that the Amended ADU Ordinance complies with State Law in connection with Issue G.

SECTION 10: With respect to HCD Issue H, the City Council makes the following findings in accordance with Government Code § 66326:

- A. HCD asserts the Amended ADU Ordinance does not comply with the law because it does not permit a mandatory attached ADU to have a maximum size of either 50% of the primary dwelling or 850 (for one bedroom or less) /1000 SF (for one bedroom or more), whichever is smaller, and under no circumstances, require an ADU to be smaller than 800 SF. (*citing*, DPMC § 9.07.210(E)(1)(h) and (E)(3)(f).)
- B. In support of its position, HCD cites Government Code sections 66314(d)(4) and 66321(b)(2) and (b)(3).
- C. Mandatory ADUs, however, are regulated by Government Code section 66323 (and those provisions are reflected in DPMC 9.07.210(E)), **not** Government Code section 66314 or 66321.
- D. Indeed, Government Code section 66323 provides that it applies "[n]otwithstanding Sections 66314 to 66322, inclusive..."
- E. Stated otherwise, the provisions cited by HCD (Government Code sections 66314 and 66321) to non-mandatory ADUs; and specifically do **not** apply to mandatory ADUs described in Government Code section 66323 and DPMC § 9.07.210 (E)(1)(h) and (E)(3)(f). (See, Gov. Code § 66323(a)).
- F. With respect to non-mandatory ADUs, the City's Ordinance complies with the size requirements set forth in Government Code sections 66314 and 66321, as set forth in DPMC § 9.07.210(F)(7), and HCD does not argue otherwise.
- G. Moreover, to the extent that there is a conflict between State Law and the City's Ordinance (and there is not), section 9.07.210(F) provides a catch all exception providing that the development standards set forth in that section apply "unless superseded by state law."
- H. As a result, for all of the foregoing reasons, the City Council finds that the Amended ADU Ordinance complies with State Law in connection with Issue H.

SECTION 11: With respect to HCD Issue I, the City Council makes the following findings in accordance with Government Code § 66326:

- A. HCD suggests the Amended ADU Ordinance should be clarified to make clear that JADUs may be located within the walls of a proposed or an existing single family residence, including an attached garage.
- B. The Amended ADU Ordinance complies with the State ADU Laws in that it already permits JADUs may be located within the walls of a proposed or an existing single family residence, including an attached garage.
- C. In addition, this issue was already addressed in the City Council's findings set forth in the Amended ADU Ordinance, and Resolution 23-06-20-01 which is incorporated therein, thus bringing the Amended ADU Ordinance into compliance with the State ADU Laws in connection with this issue, and nothing in the State ADU Laws authorizes HCD to supplant the City Council's legislative powers in connection with its adoption of Resolution 23-06-20-01.

SECTION 12: With respect to HCD Issue J, the City Council makes the following findings in accordance with Government Code § 66326:

- A. HCD has not indicated any amendment is needed to Amended ADU Ordinance in connection with this issue and rather suggests the City should review the standards in its Flood Plain Overlay District to ensure compliance with State ADU Laws.
- B. The Amended ADU Ordinance complies with the State ADU Laws in connection with this issue, and HCD has not suggested that it does not, and hence no action is required.
- C. The Council additionally finds that Amended ADU Ordinance complies with the State ADU Laws in that they permit the Council to define areas where ADUs are permitted (and conversely, where they are prohibited), and such determination is expressly permitted to be based on the impact of an ADU on public safety. The Council finds that that development standards applicable to residential construction in a Flood Plain Overlay District are expressly intended to protect public safety and that any construction therein that does not comply with such development standards is a threat to public safety. Hence, the Amended ADU Ordinance complies with the State ADU Laws in connection with Issue J in that ADU are prohibited in any area designated as a Flood Plain Overlay District unless they comply with the applicable development standards, based on the impact they would otherwise have on public safety.

SECTION 13: With respect to HCD Issue K, the City Council makes the following findings in accordance with Government Code § 66326:

- A. HCD has not indicated any amendment is needed to Amended ADU Ordinance in connection with this issue and rather suggests the City should clarify that the various provisions in question related to compliance with the

California Coastal Act only apply if required where the Coastal Act is impacted or conflicts with the State ADU Laws.

- B. The Amended ADU Ordinance complies with the State ADU Laws in connection with this issue, and HCD has not suggested that it does not, and hence no action is required. Moreover, the provisions cited by HCD in issue K, related to the Coastal Overlay Zone, only apply in situations where the Coastal Act implementation obligations conflict with the State ADU Laws.

SECTION 14: With respect to HCD Issue L, the City Council makes the following findings in accordance with Government Code § 66326:

- A. HCD acknowledges that the City may prohibit ADUs/JADUs having non-conforming parking or driveway length, where the construction thereof would result in a threat to public health and safety. HCD suggests the Amended ADU Ordinance should be clarified so as to make clear the applicable language of the Amended ADU Ordinance only applies where that is the case.
- B. The Amended ADU Ordinance complies with the State ADU Laws in connection with this issue, and HCD has not suggested that it does not, and hence no action is required, including because the provisions cited by HCD in issue L, related to the existence threats to public health and safety, only apply in situations where the Council has determined such threats exist.
- C. In addition, this issue was already addressed in the City Council's findings set forth in the Amended ADU Ordinance, and Resolution 23-06-20-01 which is incorporated therein, thus bringing the Amended ADU Ordinance into compliance with the State ADU Laws in connection with this issue, and nothing in the State ADU Laws authorizes HCD to supplant the City Council's legislative powers in connection with its adoption of Resolution 23-06-20-01.

SECTION 15: With respect to HCD Issue M, the City Council makes the following findings in accordance with Government Code § 66326:

- A. HCD acknowledges that the City may prohibit ADUs/JADUs in areas where inadequate water or sewer services exist, or where their construction would have an impact on traffic flow or public safety. It interprets the State ADU Laws to mean the City must identify geographic areas of the City where this would apply, and that it cannot occur on a per-unit basis.
- B. The Amended ADU Ordinance complies with the State ADU Laws in connection with this issue.
- C. HCD's position is not supported by the plain language contained in the State ADU Laws. (*Halbert's Lumber, Inc. v. Lucky Stores* (1992) 6 Cal.App.4th 1233, 1238 ["There is order in the most fundamental rules of statutory interpretation

- if we want to find it. The key is applying those rules in *proper sequence*. First, a court should examine the actual language of the statute.”], *emph. in original.*)
- D. The City Council has already made findings in Resolution 23-06-20-01 that the provisions in question are in compliance with the State ADU Laws, and that “area” means any parcel upon which an ADU or JADU might be constructed, not larger geographic areas as HCD seeks to interpret the law. Indeed, by limiting the definition of area in this manner, the City Council’s finding promotes the intent of the State ADU Laws, whereas HCD’s interpretation would thwart it. By way of example, the City Council and Planning Commission record related to the adoption of the Amended ADU Ordinance makes clear that two large neighborhood areas of the City, Capistrano Beach and the Lantern District, have significant parking issues and that the construction of ADUs/JADUs would have an impact on traffic flow and public safety therein. Rather than prohibit ADUs/JADUs in such neighborhoods, as HCD suggests could occur, the Amended ADU Ordinance (as supported by Resolution 23-06-20-01) only prohibits ADUs/JADUs in “areas” of those neighborhoods where it has determined an actual impact to public safety and/or traffic flow will occur; and, it has caused the Amended ADU Ordinance to have flexibility to permit the construction of an ADU/JADU in such areas notwithstanding the ability to prohibit such construction under the State ADU Laws.
- E. In addition, this issue was already addressed in the City Council’s findings set forth in the Amended ADU Ordinance, and Resolution 23-06-20-01 which is incorporated therein, thus bringing the Amended ADU Ordinance into compliance with the State ADU Laws in connection with this issue, and nothing in the State ADU Laws authorizes HCD to supplant the City Council’s legislative powers in connection with its adoption of Resolution 23-06-20-01.

SECTION 16: With respect to HCD Issue N, the City Council makes the following findings in accordance with Government Code § 66326:

- A. HCD asserts the Amended ADU Ordinance does not contain a provision to comply with a State Law amendment adopted after the Amended ADU Ordinance was adopted.
- B. The Amended ADU Ordinance complies with the State ADU Laws in connection with this issue. In adopting the Amended ADU Ordinance, the City included a catch all provision, recognizing State Law has been subjected to continuing amendments, and seeking a solution so as to not be continually having to amend its own ADU Ordinance. Accordingly, Section 9.07.210(C)(1) of the Amended ADU Ordinance was created to enable the City to determine if provisions of its ADU laws are preempted by the ever changing State ADU Laws.

- C. As it relates to the requirement for owner-occupancy following January 1, 2025, this issue is specific example of the application of the City's catch all provision in Section 9.07.210(C)(1) of the Amended ADU Ordinance. At the time the Amended ADU Ordinance was adopted, such provision was permitted by and consistent with the State ADU Laws. However, subsequent amendments to such laws, *e.g.*, Government Code 66315, now makes clear that a city would be preempted from imposing such a requirement. The City, applying Section 9.07.210(C)(1), interprets the Amended ADU Ordinance to already read in the manner addressed in HCD Issue N.

SECTION 17: With respect to HCD Issue O, the City Council makes the following findings in accordance with Government Code § 66326:

- A. HCD asserts the Amended ADU Ordinance is contrary to State Law in connection with its height provisions, set forth in Section 9.07.210(6).
- B. The Amended ADU Ordinance complies with the State ADU Laws in connection with this issue. HCD's position to the contrary is one of interpretation and is not supported by the plain language contained in the State ADU Laws. (*Halbert's Lumber, Inc. v. Lucky Stores* (1992) 6 Cal.App.4th 1233, 1238 ["There is order in the most fundamental rules of statutory interpretation if we want to find it. The key is applying those rules in *proper sequence*. First, a court should examine the actual language of the statute."], *emph. in original.*) More specifically, the Amended ADU Ordinance contains provisions for height consistent with HCD's comments, with the exception of its interpretation that two story ADUs attached to a primary dwelling must always be permitted. This position is contrary to Section 66321(b)(4)(D) which authorizes the deviation from HCDs position.

SECTION 18: With respect to HCD Issue P (first paragraph), the City Council makes the following findings in accordance with Government Code § 66326:

- A. HCD asserts the Amended ADU Ordinance is contrary to State Law in connection with its requirement for washer and dryer hookups, and a separate entrance.
- B. The Amended ADU Ordinance complies with the State ADU Laws in connection with this issue.
- C. The definition of "accessory dwelling unit" set forth in Government Code Section 66313 is a dwelling unit that provides complete independent living facilities for one or more persons, and "shall" include permanent provisions for living, sleeping, eating, cooking, and sanitation. The Council finds that sanitation is not limited to bathrooms, a term not spelled out in the State ADU Laws, a requirement to which HCD apparently would not object; and rather includes the provisions to which HCD objects. HCD's position to the contrary

is one of interpretation and is not supported by the plain language contained in the State ADU Laws. (*Halbert's Lumber, Inc. v. Lucky Stores* (1992) 6 Cal.App.4th 1233, 1238 ["There is order in the most fundamental rules of statutory interpretation if we want to find it. The key is applying those rules in *proper sequence*. First, a court should examine the actual language of the statute."], *emph. in original.*)

- D. Similarly, the Council finds that a dwelling unit is not "independent" if it does not have a separate entrance, and an interpretation to the contrary is not reasonable. Notably, JADUs require a separate entrance (Government Code Section 66333(e)) for the obvious reason that without such an entrance they would not be "independent." HCD's position to the contrary is one of interpretation and is not supported by the plain language contained in the State ADU Laws. (*Halbert's Lumber, Inc. v. Lucky Stores* (1992) 6 Cal.App.4th 1233, 1238 ["There is order in the most fundamental rules of statutory interpretation if we want to find it. The key is applying those rules in *proper sequence*. First, a court should examine the actual language of the statute."], *emph. in original.*)

SECTION 19: With respect to HCD Issue P (second paragraph), the City Council makes the following findings in accordance with Government Code § 66326:

- A. HCD asserts the Amended ADU Ordinance is contrary to State Law in connection with requirements which it asserts are not objective, citing to 6 specific provisions in Section 9.07.210 F(8)(f), referenced as sub-issues (i) – (vi) below.
- B. The Amended ADU Ordinance complies with the State ADU Laws in connection with this issue.
- C. In connection with sub-issue (i), the Council finds the requirement for "similar" architectural style, roof pitch, color and materials is an objective standard. HCD's interpretation is overly narrow, and ignores the reality that even in connection with ministerial decisions some level of discretion must be exercised. Indeed, the State ADU Law itself has examples of this, such as in Government Code Section 66321(b)(4) where a local agency must determine if a roof pitch is aligned with the roof pitch of a primary dwelling unit. HCD's position is one of interpretation and is not supported by the plain language contained in the State ADU Laws. (*Halbert's Lumber, Inc. v. Lucky Stores* (1992) 6 Cal.App.4th 1233, 1238 ["There is order in the most fundamental rules of statutory interpretation if we want to find it. The key is applying those rules in *proper sequence*. First, a court should examine the actual language of the statute."], *emph. in original.*)
- D. The remaining sub-issues (ii) – (vi), only exist to the degree necessary to ensure compliance with the City's Certified Local Coastal Program, which HCD acknowledges is consistent with the State ADU Laws; and, to the degree there

were ever a disagreement on this point the City interprets the catch all provision of Section 9.07.210(C)(1) of the Amended ADU Ordinance to apply and finds any other interpretation would be preempted by the State ADU Laws.

SECTION 20: With respect to HCD Issue Q, the City Council makes the following findings in accordance with Government Code § 66326:

- A. HCD asserts the Amended ADU Ordinance is contrary to State Law in connection with requirements related to homeowner association approvals.
- B. The Amended ADU Ordinance complies with the State ADU Laws in connection with this issue.
- C. This issue was already addressed in the City Council's findings set forth in the Amended ADU Ordinance, and Resolution 23-06-20-01 which is incorporated therein, thus bringing the Amended ADU Ordinance into compliance with the State ADU Laws in connection with this issue, and nothing in the State ADU Laws authorizes HCD to supplant the City Council's legislative powers in connection with its adoption of Resolution 23-06-20-01.
- D. The City Council finds that HCD's position that cities cannot require HOA approval as part of the application process for ADUs/JADUs is not supported by State Law for several reasons. First, the plain language of Civil Code section 4751 allows for HOAs to establish reasonable regulations related to the construction of ADUs. (Civ. Code § 4751.) Second, State Law does not prohibit cities from requiring HOA approval as part of the application for an ADU/JADU, and the Council finds this is not a "standard" as asserted by HCD, nor is such an approval "discretionary" as suggested by HCD. Rather, the subject requirement is simply part of the process to ensure compliance with all applicable laws; and, given the limited time applicable to a local agency's approval, the Council finds it necessary to ensure all other legally required approvals exist before an application is deemed complete in order to avoid conflicting approvals between entities having jurisdiction over the same subject matter.

SECTION 21: With respect to HCD Issue R, the City Council makes the following findings in accordance with Government Code § 66326:

- A. HCD asserts the Amended ADU Ordinance is contrary to State Law because it does not include the exception to parking set forth in Government Code Section 66322(a)(6).
- B. The Amended ADU Ordinance complies with the State ADU Laws in connection with this issue. The City Council reads the parking exception referenced by HCD as redundant of other provisions of Section 66322. If and to the degree this is not correct, in adopting the Amended ADU Ordinance the City included a catch all provision, in Section 9.07.210(C)(1) of the Amended

ADU Ordinance to enable the City to determine if provisions of its ADU laws are preempted by the ever changing State ADU Laws. The City, applying this provision, interprets the Amended ADU Ordinance to already read in the manner addressed in HCD Issue R.

SECTION 22: With respect to HCD Issue S, the City Council makes the following findings in accordance with Government Code § 66326:

- A. HCD points out the timing requirements related to approvals under the State ADU Laws, and does not suggest or require that any action be taken.
- B. The Amended ADU Ordinance complies with the State ADU Laws in connection with this issue, and HCD has not suggested or stated anything to the contrary.

SECTION 23: With respect to HCD Issue T, the City Council makes the following findings in accordance with Government Code § 66326:

- A. HCD acknowledges that the City may adopt provisions which are less restrictive than requirements it could otherwise impose as an alternate path to approve an ADU/JADU that might otherwise be legally denied. Issue T acknowledges the provisions of Section 9.07.210(H) are consistent with the State ADU Law, and does not require any amendment to the Amended ADU Ordinance. Rather, HCD only seeks clarification. However, the precise nature of the clarification is not clear.
- B. The Amended ADU Ordinance complies with the State ADU Laws in connection with this issue, and HCD has not suggested or stated anything to the contrary.
- C. Moreover, this issue was already addressed in the City Council's findings set forth in the Amended ADU Ordinance, and Resolution 23-06-20-01 which is incorporated therein, thus bringing the Amended ADU Ordinance into compliance with the State ADU Laws in connection with this issue, and nothing in the State ADU Laws authorizes HCD to supplant the City Council's legislative powers in connection with its adoption of Resolution 23-06-20-01.

SECTION 24: With respect to HCD Issue U, the City Council makes the following findings in accordance with Government Code § 66326:

- A. HCD asserts the Amended ADU Ordinance is contrary to State Law because of requirements for a deed restriction for JADU addressing several issues.
- B. The Amended ADU Ordinance complies with the State ADU Laws in connection with this issue.

- C. First, State ADU Laws specifically permit deed restrictions for JADUs related to the sale of the JADU separate from the primary dwelling.
- D. Second, other State Laws permit the City to regulate short term rentals, and already require compliance with such State Law in connection therewith. Moreover, the State ADU Laws specifically allow the requirement for owner occupancy set forth in the Amended ADU Ordinance.
- E. Finally, deed restrictions are not standards imposed as a condition of development on a JADU, and even if they were are not proscribed by the State ADU Laws. Rather, they are enforcement tools related to State Laws applicable to all dwellings, including JADUs.

SECTION 25: With respect to HCD Issue V, the City Council makes the following findings in accordance with Government Code § 66326:

- A. HCD points out the requirements of State ADU Law related to JADUs that share a bathroom with a primary dwelling, and more specifically those related to interior entrance for access thereto. HCD does not require an amendment to the Amended ADU Ordinance in this regard, or find that it is not consistent with State ADU Law, and rather suggests the City provide clarity to avoid confusion.
- B. The Amended ADU Ordinance complies with the State ADU Laws in connection with this issue.
- C. The City already interprets the Amended ADU Ordinance to read in the manner which HCD suggests, and notes that any JADU that does not have access to a bathroom would lack required sanitary facilities. The Council finds no amendment is necessary to bring the Amended ADU Ordinance into compliance with State ADU Law in connection with this issue. Moreover, if and to the degree there is any ambiguity on this point, in adopting the Amended ADU Ordinance the City included a catch all provision, in Section 9.07.210(C)(1) of the Amended ADU Ordinance to enable the City to determine if provisions of its ADU laws are preempted by the ever changing State ADU Laws. The City, applying this provision, interprets the Amended ADU Ordinance to already read in the manner addressed in HCD Issue V.

SECTION 26: With respect to HCD Issue W, the City Council makes the following findings in accordance with Government Code § 66326:

- A. HCD acknowledges that the City may prohibit HCD acknowledges that the City may prohibit JADUs on property having non-conforming parking or driveway length where the construction of the JADU would pose a threat to public health and safety.

- B. The Amended ADU Ordinance complies with the State ADU Laws in connection with this issue.
- C. The City Council finds, and has already made findings in Resolution 23-06-20-01, that the provisions in question are in compliance with the State ADU Laws, and that construction of a JADU where non-conforming parking or drive-way length exists poses a threat to public health and safety. Since this issue was already addressed in the City Council’s findings set forth in the Amended ADU Ordinance, and Resolution 23-06-20-01 which is incorporated therein, the Amended ADU Ordinance is in compliance with the State ADU Laws in connection with this issue, and nothing in the State ADU Laws authorizes HCD to supplant the City Council’s legislative powers in connection with its adoption of Resolution 23-06-20-01.

SECTION 26: With respect to HCD Issue X, the City Council makes the following findings in accordance with Government Code § 66326:

- A. HCD finds the City’s findings in Resolution 23-06-20-01 do not adequately address its findings from its January 13, 2023 letter.
- B. The Amended ADU Ordinance complies with the State ADU Laws in connection with this issue.
- C. The City Council finds noting in the State ADU Laws authorizes HCD to second guess the City Council, or authorizes HCD to supplant the City Council’s legislative powers in connection with its adoption of Resolution 23-06-20-01.

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

PASSED, APPROVED, AND ADOPTED this 3rd day of September 2024.

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. 24-09-03-XX was duly adopted and passed at a regular meeting of the City Council on the 3rd day of September 2024, by the following roll-call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

SHAYNA SHARKE
CITY CLERK

SUPPORTING DOCUMENT B / EXHIBIT A TO RESOLUTION

STATE OF CALIFORNIA - BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY

GAVIN NEWSOM, Governor

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

2020 W. El Camino Avenue, Suite 500
 Sacramento, CA 95833
 (916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



June 28, 2024

NOTE: This version of the letter from HCD dated June 28, 2024 has been edited where indicated by the highlighted language below. The substance of the letter has not been changed.

Brenda Wisneski, Community Development Director
 Community Development Department
 City of Dana Point
 33282 Golden Lantern Dana Point, CA 92629

RE: Review of City of Dana Point's Accessory Dwelling Unit and Junior Accessory Dwelling Unit (ADU) Ordinances, and Resolution

Please Note: As of March 25, 2024, with the Chaptering of Senate Bill (SB) 477 (Chapter 7, Statutes of 2024), the sections of Government Code relevant to State ADU and Junior Accessory Dwelling Unit (JADU) Law have been re-numbered.¹

Dear Brenda Wisneski:

The California Department of Housing and Community Development (HCD) has reviewed the City of Dana Point's (City) ADU Ordinance No. 23-06 (Ordinance), adopted July 18, 2023, and Resolution 23-06-20-01 (Resolution), adopted June 20, 2023, by the City Council. Pursuant to Government Code section 66326, subdivision (a), HCD finds that the City's ADU and JADU ordinances are not compliant with State ADU Law, as described below.² Accordingly, the City has up to 30 days to respond to these findings and must provide a written response to this notice no later than July 28, 2024.

Background

On January 13, 2023, HCD sent an ADU Findings Letter regarding the City's previous ADU Ordinance.³ The City replied on February 13, 2023, indicating that the City was drafting an updated ordinance. On June 20, 2023, the City adopted a new ADU Ordinance and on July 18, 2023, a Resolution. In the

¹ Enclosure 1 – ADU and JADU Government Code section Conversion Chart.

² State ADU Law refers to ADU and JADU Laws, as enacted in Chapter 13 of Division 1 of Title 7 of the Government Code.

³ Enclosure 2 – Dana Point Findings Letter – January 13, 2023.

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Resolution, in compliance with Government Code section 66326, subdivision (b)(2)(B), the City provides findings that the Ordinance complies with State ADU Law, and therefore did not amend certain sections of the Ordinance despite HCD's ADU Findings Letter and April 5, 2023, Letter of Technical Assistance outlining the City's non-compliance and directing the City to process ADUs pursuant to State ADU Law.

While the new Ordinance contains substantial changes following HCD's findings, the Ordinance does not comply with State ADU Law in the following ways:

Findings

1. **HCD ISSUE A:** Section 9.07.210 B.2. & B.4. – *“Attached” and “Detached” Definitions and Development Standards* – The Ordinance states, “An ‘attached Accessory Dwelling Unit’ shall mean and refer to an accessory dwelling unit, as that term is defined in Government Code section 65852.2 subdivision (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, including but not limited to an Accessory Dwelling Unit that is located within a proposed or existing primary dwelling or accessory structure” The Ordinance also states, “A ‘detached Accessory Dwelling Unit’ shall mean and refer to an accessory dwelling unit, as that term is defined in Government Code section 65852.2, subdivision (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.”⁴

Government Code section 66314, subdivision (d)(3) states, “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, including detached garages.” The City allows for ADUs to be created within accessory structures that are physically detached from the primary dwelling. Under the City's definition, these ADUs would be considered “attached” and may thus lead to confusion because the structure is detached from any structures. HCD recommends that the City add a separate definition for ADUs located within the primary dwelling or existing accessory structure (whether the accessory structures are attached or detached).

2. **HCD ISSUE B:** Section 9.04.210 B.5, 6. – *Existing accessory structure and Dwelling Unit* – The Ordinance states, “The term existing accessory structure shall mean an accessory structure for which construction was completed on or before January 1, 2020.” (internal quotations omitted). The Ordinance also states, “The term existing dwelling units shall mean a dwelling unit for which the construction was completed, and could be legally occupied, before January 1, 2020.” However, State ADU Law provides for ADUs to be created in lots “zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.”⁵ Statute does not require an accessory structure or primary dwelling be constructed before or after a specific date for it to be eligible for an ADU. The City must remove definitions that require the existence of a structure or dwelling unit to be permitted or occupiable prior to specific dates.
3. **HCD ISSUE C:** Section 9.07.210 B.7. – *Existing Multifamily Definition* – The Ordinance states, “The term ‘existing multi-family dwelling’ shall mean a multi-family dwelling for which construction

⁴ Gov. Code, § 65852.2, subd. (j)(1), is renumbered as § 66313, subdivision (a).

⁵ Gov. Code, § 66314.

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was completed in such a manner that all of the dwelling units could be legally occupied on or before January 1, 2020." State ADU Law only requires lots be "zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling."⁶ The statute does not require an existing multifamily dwelling be constructed prior to a specific date to be eligible for an ADU. Therefore, the City must remove references to constructed or occupied dates for existing multifamily dwellings from its definitions.

4. **HCD ISSUE D:** Section 9.07.210 C.3. – *Existing Illegal ADUs* – The Ordinance states, "Subject to Government Code Section 65852.2, subdivision (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." However, Government Code section 66332, subdivision (a) states, "Notwithstanding any other law, and except as otherwise provided in subdivision (b), a local agency shall not deny a permit for an unpermitted accessory dwelling unit that was constructed before January 1, 2018, due to either of the following: [1] The accessory dwelling unit is in violation of 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. [2] The accessory dwelling unit does not comply with this Article or any local ordinance regulating accessory dwelling units." Therefore, the City cannot deny a permit for an unpermitted ADU created before January 1, 2018, even if the unpermitted ADU does not meet the same standards and requirements for a newly proposed ADU. The City must amend the Ordinance to comply with State ADU Law.
5. **HCD ISSUE E:** Section 9.07.210 D.1., D.4.b., E.1.f., E.3.e., and E.4.f. – *Deed Restriction* – The Ordinance States, "With the exception of legal non-conforming Accessory Dwelling Units described in Section 9.07.210 (C)(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)." However, Government Code section 66315 states, "Section 66314 establishes the maximum standards that a local agency 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 Section 66314, shall be used or imposed, including an owner occupant requirement, except that a local agency may require that the property may be used for rentals of terms 30 days or longer." Therefore, a deed restriction may not be the basis of delay or denial of a permit for an ADU. In addition, the City should review the standards in the City's Building and Construction Codes within Title 8 to ensure compliance with State ADU Law and clarify that any conflicting requirements do not apply.
6. **HCD ISSUE F:** Section 9.07.210 D.4.b., C.1. and 9.07.215 C.4.b, and D. – *Underlying Development Standards* – The Ordinance states that the Community Development Director shall approve an application "...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." However, Government Code section 66315 states, "Section 66314 establishes the maximum standards that a local agency shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or

⁶ Gov. Code, § 66314, subd. (d)(2).

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existing single-family dwelling. No additional standards, other than those provided in Section 66314, shall be used or imposed..." The underlying development standards in the zoning district or overlay district may not apply if they conflict with or are more stringent than the Ordinance or State ADU Law. Therefore, the City must amend the Ordinance to indicate these exceptions and should evaluate standards within the zoning district and overlay districts to ensure compliance with State ADU Law.

7. **HCD ISSUE G:** Section 9.07.210 E. – *ADU and JADU Unit Allowance* – The Ordinance states, "Pursuant to Government Code section 65852.2, subdivision (e),⁷ ADUs that meet the following development standards shall qualify for mandatory approval of an ADU Permit Application. Only one of the following shall be permitted per lot" However, Government Code section 66323, subdivision (a) states, "Notwithstanding Sections 66314 to 66322, 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: (1) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling... (A) 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." Paragraph (2) permits "[o]ne detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks." The statute does not use "or" or "one of" to indicate only one or another would be applicable to the exclusion of the other. Rather, the use of the term "any" followed by an enumeration of state mandated ADU types permitted indicate that any of these ADU types can be combined on a lot zoned for single-family dwellings. This allows a homeowner who meets specified requirements to create one converted ADU; one detached, new construction ADU; and one JADU. Thus, if the local agency approves an ADU that is created from existing (or proposed) space, and the owner subsequently applies for a detached ADU (or vice versa) that meets the size and setbacks pursuant to the subdivision, the local agency cannot deny the application, nor deny a permit for a JADU under this section. This subdivision also applies to ADUs created pursuant to paragraphs (3) and (4), on lots with proposed or existing multifamily dwellings. Limiting single-family lots to one ADU prevents property owners from creating ADUs mandated under section 66323. The City must revise the Ordinance to remove these restrictions.
8. **HCD ISSUE H:** Section 9.07.210 E.1.h., E.3.f. – *Total Floor Area/Maximum Size* – The Ordinance states, "The total floor area of an attached ADU shall be limited to not more than 800 square feet" and "[t]he total floor area of an ADU shall be limited to 50% of the average living area of existing Multi-Family dwelling units. Notwithstanding the foregoing, an applicant shall be allowed to construct an attached ADU that is at least 800 square feet." However, Government Code section 66314, subdivision (d)(4) states, "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." These standards apply to both single-family and multifamily units. Thus, the City must amend their ordinance to allow for the 50-percent calculation for both.

In addition, Government Code section 66321, subdivision (b)(2) states that "a local agency shall not establish by ordinance... [a] maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either" 850 square feet or 1,000 square feet for an ADU that has at least two bedrooms. Additionally, Government Code section 66321, subdivision (b)(3) states that "a local agency shall not establish by ordinance... [a]ny requirement for a zoning clearance or separate zoning review or any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary

⁷ Gov. Code § 65852.2, subd. (e), is renumbered as § 66323.

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dwelling, or limits on lot coverage, floor area ratio, open space, front setbacks, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards." In other words, the total floor area of an attached ADU may be either up to 50 percent of an existing primary dwelling's total floor area, or 850 square feet, with an increase 1,000 square feet for an ADU with more than one bedroom, whichever is smaller, and under no circumstances may the minimum size be less than 800 square feet due to the size of the primary dwelling. Therefore, the City must amend the Ordinance to allow for attached ADUs to expand beyond 800 square feet as applicable.

9. **HCD ISSUE I:** Section 9.07.210 E.1.a. and Section 9.07.215 D.4.b. – *JADUs and Attached Garages* – The Ordinance states, "The ADU or JADU must be wholly contained within the existing or proposed space of an existing or proposed single family dwelling. In addition, an ADU (but not a JADU) may be contained wholly within an existing accessory structure." However, Government Code section 66333, subdivision (d) allows "...a permitted junior accessory dwelling unit to be constructed within the walls of the proposed or existing single-family residence. For purposes of this paragraph, enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence." The City should amend the Ordinance to clarify that JADUs may be created within enclosed uses within the residence such as an attached garages.
10. **HCD ISSUE J:** Section 9.07.210 F.1.a. – *Flood Plain Overlay District Standards* – The Ordinance states, "Any attached or detached ADU located in the City's Flood Plain Overlay District shall comply with all of the development standards applicable to residential development in the City's Flood Plain Overlay District." However, Government Code section 66315 states, "Section 66314 establishes the maximum standards that a local agency 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 Section 66314, shall be used or imposed...." The City should review the standards in the Flood Plain Overlay District to ensure compliance with State ADU Law and clarify that any conflicting requirements do not apply.
11. **HCD ISSUE K:** Section 9.07.210 F.1.b. – *Coastal Overlay District* – The Ordinance states that "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." However, Government Code section 66317, subdivision (a) states, "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." Government Code section 66329 states, "Nothing in this article 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)...." Unless the California Coastal Act requires a Coastal Development Permit or Conditional Use Permit, the City may not require a discretionary review or hearing for the approval of an ADU permit application. The City must clarify that such a process is only required when the California Coastal Act is impacted by or conflicts with State ADU Law.
12. **HCD ISSUE L:** Section 9.07.210 F.1.c. – *Existing Non-conforming Structure or Use* – The Ordinance states in Subsection F.1.c., "Due to public safety, public nuisance, and traffic flow

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concerns, no attached or detached ADU or JADU shall be constructed on any lot which has an existing development constructed upon it that is non-conforming with respect to the City's current use or development standards related to parking or driveway length, without obtaining a Site Development Permit (SDP) pursuant to Section 9.07.210(H)." The Ordinance presumptively prohibits all ADUs and JADUs when a non-conforming use or development standard exists on a lot. However, Government Code section 66322 states, "Notwithstanding any other law . . . (b) The local agency shall not deny an application for a permit to create an accessory dwelling unit due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and are not affected by the construction of the accessory dwelling unit." Before the City denies an ADU or JADU⁸ application, it must show that the nonconformity presents a threat to public health and is affected by the construction of the ADU. The City must clarify that the construction of an ADU on a lot which has an existing development constructed upon it that is non-conforming with respect to the City's current use or development standards related to parking or driveway length may be prohibited only if such non-conformance presents a threat to public health and safety and is affected by the construction of the ADU.

13. **HCD ISSUE M:** Section 9.07.210 F.1.d. – *Application Review* – The Ordinance states, "The City shall review each [ADU] Application for any other issues related to adequacy of water or sewer services, and /or impact of the proposed ADU on traffic flow, or public safety...." However, Government Code section 66317, subdivision (a) states, "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." The Ordinance provides for a per-unit discretionary review in violation of State ADU Law. Government Code section 66314, subdivision (a) provides that a local agency may, through an ordinance, "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." The City must designate the specific areas that are impacted by traffic flow and public safety. The City is not authorized by statute to create a discretionary review on a per-unit basis. Therefore, the City must remove this section of the Ordinance to comply with State ADU Law.
14. **HCD ISSUE N:** Section 9.07.210 F.2. – *Owner Occupancy* – The ADU Ordinance requires, by January 1, 2025, that "a natural person with legal or equitable title to the lot must reside in either the primary dwelling unit or the ADU as the person's legal domicile and permanent residence." However, Government Code section 66315 states, "No additional standards, other than those provided in Section 66314, shall be used or imposed, including an owner-occupant requirement, except that a local agency may require that the property may be used for rentals of terms 30
15. **HCD ISSUE O:** Section 9.07.210 F.6.a., b. and c. – *Maximum Height/Stories* – The Ordinance states, "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." However, Government Code section 66321, subdivision (b)(4) provides for a height limit of 16, 18, 20, or 25 feet depending on the circumstances of the ADU. In addition, Government Code section 66321, subdivision (b)(4)(D) states, "A height of 25 feet or the height limitation in the local zoning ordinance that applies to the primary dwelling, whichever is lower, for an accessory dwelling unit

⁸ Gov. Code, § 66336.

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that is attached to a primary dwelling. This clause shall not require a local agency to allow an accessory dwelling unit to exceed two stories." The City must allow at least two stories for an ADU attached to a primary dwelling. The City must also amend the maximum height limit for detached and attached ADUs to comply with State ADU Law.

16. **HCD ISSUE P:** Section 9.07.210, F.8.b., F.8. f. – *Additional Requirements* – The Ordinance lists several additional standards for ADUs, some of which are in excess of the requirements listed in Government Code section 66314. For example, the Ordinance provides that "ADUs shall include sufficient permanent provisions for living, sleeping, eating, cooking, and sanitation, including but not limited to washer dryer hookups and kitchen facilities..." and that "[a]ll ADUs are required to have separate exterior access from the proposed or existing primary residence." However, pursuant to Government Code section 66315, "Section 66314 establishes the maximum standards that a local agency 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 Section 66314, shall be used or imposed" The requirement for washer and dryer hookups and separate exterior access are in excess of the standards found within Government Code section 66314. Therefore, these additional standards may not apply to ADUs with an existing or proposed single-family dwelling on the lot.

Additionally, the Ordinance states, "In the event the exterior features of the primary dwelling are altered or remodeled, the exterior features of the ADU shall be updated in order to maintain consistency between the buildings...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; (v) minimize and, where feasible, avoid shoreline hazards; (vi) contain the size, scale, access and amenities that are accessory in nature to the primary dwelling." These terms and conditions are subjective and require discretion and independent judgement. Government Code section 66314, subdivision (b) requires that local development standards be objective. "Objective standards" means 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.⁹ Therefore, the City must amend the Ordinance to apply only objective standards to ADUs and JADUs.

17. **HCD ISSUE Q:** Section 9.07.210 F.8.j. and 9.07.215 D.4.g. – HOA Approval – The Ordinance states, "In the event that the property upon which the ADU is proposed is located within a Homeowner's Association (HOA), the applicant shall submit to the City written evidence of the HOA's approval of the ADU concurrent with their ADU application." Government Code section 66317, subdivision (a) requires that "[a] permit application for an accessory dwelling unit or 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 either approve or deny the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot." Subdivision (c) of this section states, "No local ordinance, policy, or regulation, other than an accessory dwelling unit ordinance

⁹ Gov. Code, § 66313, subd. (h).

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consistent with this article shall be the basis for the delay or denial of a building permit or a use permit under this section." Additionally, "Section 66314 establishes the maximum standards that a local agency 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 Section 66314, shall be used or imposed, including an owner-occupant requirement, except that a local agency may require that the property may be used for rentals of terms 30 days or longer."¹⁰ Therefore, the City may not require an applicant to provide HOA approval with their ADU and JADU application. The City must remove this Ordinance provision to comply with State ADU Law.

18. **HCD ISSUE R:** Section 9.07.210. F.9.e. – *Parking Requirement Exemptions* – The Ordinance states, "The foregoing parking standards shall not be imposed on an ADU in any of the following circumstances," and lists several exemptions required by Government Code section 66321, subdivision (a). However, the Ordinance is missing the exemption in paragraph 6, which requires no parking requirements be imposed on an ADU "[w]hen a permit application for an accessory dwelling unit is submitted with a permit application to create a new single-family dwelling or a new multifamily dwelling on the same lot, provided that the accessory dwelling unit or the parcel satisfies any other criteria listed in this subdivision." Therefore, the City must amend the Ordinance to include this exception.
19. **HCD ISSUE S:** Section 9.07.210 G. – *Associated Permits* – The Ordinance states, "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... those associated permits must be applied for and obtained prior to applying for an ADU permit." However, Government Code section 66316 states, "An existing accessory dwelling unit 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 article." An ADU should not trigger a requirement for a discretionary permit. In addition, "The permitting agency shall either approve or deny the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application."¹¹ Government Code section 66317, subdivision (c) further states, "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 section." HCD reminds the City that State ADU Law requires that an application is approved or denied within 60 days of being deemed complete and does not require, and may not be delayed by, any other associated permits prior to submittal of the ADU application.
20. **HCD ISSUE T:** Section 9.07.210 H. – *Nonministerial Process* – The Ordinance states where "an Applicant desires to develop an ADU that would otherwise be prohibited as a result of not complying with the development standards set forth in this Section, he/she may apply for a Site Development Permit...", which is subject to Planning Commission approval, creating a discretionary process. Government Code section 66317 requires a local agency to consider and approve ADUs "ministerially without discretionary review or a hearing" and to "either approve or deny the application ... within 60 days from the date the permitting agency receives a completed application" HCD understands that the Ordinance is intended to be less restrictive than State

¹⁰ Gov. Code, § 66315.

¹¹ Gov. Code, § 66317, subd. (a).

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ADU Law by creating an alternative path to denial. However, where this process leads to undue delay or ambiguity, it is inconsistent with State ADU Law. Moreover, Government Code section 66317 states that "[i]f the local agency has not approved or denied the completed application within 60 days, the application shall be deemed approved." The City should provide appropriate clarification.

21. **HCD ISSUE U:** Section 9.07.215 D.1. and D.2. – *30-Day Rental* – The Ordinance states, "The JADU shall not be sold separately from the primary dwelling unit and shall be rented for less than thirty (30) days." Section D.2. requires a deed restriction that includes a 30-day minimum rental restriction. Government Code section 66333 states, "Notwithstanding Article 2 (commencing with Section 66314), 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 " State JADU Law does not provide a 30-day minimum rental term and explicitly lists the deed restrictions to be recorded. Therefore, the City may not require a 30-day minimum rental for JADUs and must remove this requirement and deed restriction.
22. **HCD ISSUE V:** Section 9.07.215 D.4. – *Separate Bathroom* – The Ordinance lists the allowable unit size and construction of JADUs. However, Government Code section 66333 states, "If a permitted junior accessory dwelling unit does not include a separate bathroom, the permitted junior accessory dwelling unit shall include a separate entrance from the main entrance to the structure, with an interior entry to the main living area." Therefore, the City should provide for a JADU that shares a bathroom with the primary dwelling and has a separate interior entrance for consistency with State ADU Law and to avoid confusion.
23. **HCD ISSUE W:** Section 9.07.215 D.4.c. – *Nonconforming Condition* – The Ordinance states, "No JADU shall be constructed in any dwelling that is non-conforming with respect to parking, or driveway length. However, Government Code section 66336 states, "A local agency shall not deny an application for a permit to create a junior accessory dwelling unit pursuant to this article due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and that are not affected by the construction of the junior accessory dwelling unit." Therefore, the City may not preclude (and deny) a JADU application because of an existing nonconforming condition. To deny a JADU application, the City must find that the nonconforming condition is a threat to public health and safety and affected by the construction of the JADU. The City must clarify that the construction of an ADU on a lot which has an existing development constructed upon it that is non-conforming with respect to the City's current use or development standards related to parking or driveway length may be prohibited only if such non-conformance presents a threat to public health and safety and is affected by the construction of the ADU.
24. **HCD ISSUE X:** *Resolution No. 23-06-20-01* – On June 20, 2023, the City adopted Resolution No. 23-06-20-01 with findings in response to HCD's first Findings Letter, as required by State ADU Law.¹² However, HCD finds that the Resolution does not adequately address HCD's original findings from January 13, 2023. The City's findings provided in the resolution are still in conflict with State ADU Law and the City failed to address the indicated changes with the

¹² Gov. Code, § 66326, subd. (b)(2)(B).

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adoption of their new ADU Ordinance.

Complaints

Please note that HCD has received several complaints in reference to the City's application of State ADU Laws when processing ADU applications. On April 5, 2023,¹³ HCD addressed this issue with the City via a Letter of Technical Assistance in which HCD reminded the City of its obligation to process ADU permits by applying State ADU Laws until such time that the City's ordinance is compliant. Based on the received complaints, including the one previously mentioned in the April 5, 2023, letter, it appears the City is not adhering to State ADU Law regardless of HCD's Letter of Technical Assistance or HCD's ADU Findings Letters.

Conclusion and Next Steps

Though the City has adopted a new Ordinance with findings in response to HCD's first Findings Letter, as required by State ADU Law,¹⁴ HCD finds the new Ordinance non-compliant with State ADU Law.

Accordingly, the City has two options in response to this letter.¹⁵ The City can either amend the Ordinance to comply with State ADU Law,¹⁶ or adopt the Ordinance without changes and include findings in its adoptive resolution explaining why the City believes that the Ordinance complies with State ADU Law despite HCD's findings.¹⁷ If the City fails to take either course of action and bring the Ordinance into compliance with State ADU Law, HCD must notify the City and may notify the California Office of the Attorney General that the City is in violation of State ADU Law.¹⁸

HCD appreciates the City's efforts in the preparation and adoption of the Ordinance and welcomes the opportunity to assist the City in fully complying with State ADU Law.

Please feel free to contact me at Jamie.Candelaria@hcd.ca.gov if you have any questions.

Sincerely,



Jamie Candelaria
Senior Housing Accountability
Manager Housing Policy Development
Division

Enclosures

¹³ Enclosure 4, HCD Letter of Technical Assistance, April 5, 2023.

¹⁴ Gov. Code, § 66326, subd. (b)(2)(B).

¹⁵ Gov. Code, § 66326, subd. (c)(1).

¹⁶ Gov. Code, § 66326, subd. (b)(2)(A).

¹⁷ Gov. Code, § 66326, subd. (b)(2)(B).

¹⁸ Gov. Code, § 66326, subd. (c)(1).

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Enclosure 1, State ADU Law SB 477 Conversion Table.
Enclosure 2, HCD Review of the City of Dana Point's Accessory Dwelling Unit
(ADU) Ordinance, January 13, 2023.
Enclosure 3, HCD Letter of Technical Assistance, April 5, 2023.

cc: Mike Killebrew, City Manager, City of Dana Point

State ADU/JADU Law Statutory Conversion Table

New Government Code Sections	Previous Government Code Sections
Article 1. General Provisions	
66310	65852.150 (a)
66311	65852.150 (b)
66312	65852.150 (c)
66313	General Definition Section 65852.2 (j) 65852.22 (j)
Article 2. Accessory Dwelling Unit Approvals	
66314	65852.2(a)(1)(A), (D)(i)-(xii), (a)(4)-(5)
66315	65852.2 (a)(8)
66316	65852.2 (a)(6)
66317	65852.2 (a)(3), (a)(7)
66318	65852.2 (a)(9), 65852.2 (a)(2)
66319	65852.2 (a)(10)
66320	65852.2 (b)
66321	65852.2 (c)
66322	65852.2 (d)
66323	65852.2 (e)
66324	65852.2 (f)
66325	65852.2 (g)
66326	65852.2 (h)
66327	65852.2 (i)
66328	65852.2 (k)
66329	65852.2 (l)
66330	65852.2 (m)
66331	65852.2 (n)
66332	65852.23
Article 3. Junior Accessory Dwelling Units	
66333	65852.22 (a)
66334	65852.22 (b)
66335	65852.22 (c)
66336	65852.22 (d)
66337	65852.22 (e)
66338	65852.22 (f)-(g)
66339	65852.22 (h)
Article 4. Accessory Dwelling Unit Sales	
66340	65852.26 (b)
66341	65852.26 (a)
66342	65852.2 (a)(10)

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT

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January 13, 2023

Belinda Deines, Principal Planner
 Community Development Department
 City of Dana Point
 33282 Golden
 Lantern Dana Point,
 CA 92629

Dear Belinda Deines:

**RE: Review of the City of Dana Point's Accessory Dwelling Unit (ADU)
 Ordinance under ADU Law (Gov. Code, § 65852.2)**

Thank you for submitting the City of Dana Point's (City) accessory dwelling unit (ADU) Ordinance No. 21-06 (Ordinance) adopted August 23, 2021, to the California Department of Housing and Community Development (HCD). HCD has reviewed the Ordinance and submits these written findings pursuant to Government Code section 65852.2, subdivision (h). HCD finds that the Ordinance does not comply with section 65852.2 in the manner noted below. Under that statute, the City has up to 30 days to respond to these findings. Accordingly, the City must provide a written response to these findings no later than February 13, 2023.

The Ordinance addresses many statutory requirements; however, HCD finds that the Ordinance does not comply with State ADU Law in the following respects:

- Section 9.07.210(C)(1) – *Standards for ADUs* – The Ordinance states, "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..." ADU development standards may be imposed by the local agency with an adopted ADU ordinance. These standards within an underlying zone may apply when noted in the adopted ADU ordinance, but shall not be more restrictive than those contained in state statute. (Gov. Code, § 65852.2, subs. (a)(8)) Furthermore, local development standards provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), cannot preclude the approval of ADUs created under subdivision (e). Therefore, the City must amend this section of the Ordinance to clarify that state statute prevails in cases of a conflict between local zoning and overlay districts and State ADU Law.
- Section 9.07.210(D)(4)(a) – *Permit Revocation* – The Ordinance states that "Subject to Government Code section 65852.2 (n), an Accessory Dwelling Permit may be revoked if

the Accessory Dwelling Unit violates one or more requirements of this section or any other applicable portions of the Dana Point Municipal Code.” This provision raises concerns as it is unclear to its exact meaning and under what circumstances it would apply. Assuming building permits are issued following review and approval, it remains unclear what circumstances would allow for revocation. The City should remove the phrase “or any other applicable portions of the Dana Point Municipal code”, or in the alternative, specify the “applicable portions,” and amend that the application of Municipal Code is subject to conformity with State ADU Law.

- Section 9.07.210(E)(1) – Number of ADUs Allowed per Site – “An applicant may construct one (1) attached ADU or one (1) attached JADU per lot...” This reference is outdated. Current Government Code section 65852.2, subdivision (e)(1)(A), provides for “One accessory dwelling unit and one junior accessory dwelling unit per lot” (emphasis added). Therefore, the City must change “or” to “and.” Additionally, Government Code section 65852.2, subdivision (e)(1) states that a local agency shall ministerially approve an application to create any of the following ADUs listed from subdivision (e)(1)(A) through (D). The City must amend its ordinance to also allow for a combination of subdivision (e)(1)(A) and (B) or (e)(1)(C) and (D).

The Ordinance also incorrectly references “attached” ADUs or Junior ADUs (JADUs) as subject to mandatory approval pursuant to Government Code section 65852.2, subdivision (e). However, subdivision (e) only addresses ADUs and JADUs that are created within the proposed or existing space of a primary dwelling, or ADUs created within and accessory structure (i.e., conversions), and newly created detached ADUs. Subdivision (e) does not address “attached ADUs.” Therefore, the City must remove the reference to “attached ADUs” from Section 9.07.210 (E) of the Ordinance.

- Section 9.07.210(E)(1)(a) – Accessory Structures and JADUs – The Ordinance states that “The ADU or JADU must be wholly contained within the proposed space of a propose single family dwelling, or within the existing space of an existing single-family dwelling or an existing accessory structure.” However, Government Code section 65852.2 (e)(1)(A)(iv) additionally requires that JADUs comply with section 65852.22. Section 65852.22, subdivision (a)(4) requires that JADUs be constructed “within the walls of the proposed or existing single-family residence. For the purposes of this paragraph, enclosed uses within the residence, such as attached garages, are considered part of the proposed or existing single-family residence.” Therefore, JADUs may be constructed in an attached garage. Note that JADUs may not be created in any other accessory structure or detached garage. The City must amend the Ordinance to allow JADUs to be created only within the single-family dwelling or attached garage, while ADUs may be created within a primary dwelling or within an accessory structure.
- Sections 9.07.210(E)(1)(f), 9.07.210(E)(2)(e), 9.07.210(F)(2), 9.07.210(F)(3) – Deed Restriction – The Ordinance currently prohibits the separate sale of an ADU. However, Government Code section 65852.26 creates a narrow exception to allow separate conveyance of an ADU to a qualified buyer if the property was built or developed by a qualified nonprofit corporation, among other things. The City must amend the Ordinance to add the exception.
- Sections 9.07.210(E)(1)(h) and (E)(3)(g) – Maximum Size of an Attached ADU –The Ordinance states “The total floor area of an attached ADU shall be limited to 50% of living area of the primary dwelling.” It later requires that “the total floor area of [a converted ADU

in a multifamily building] be limited to 50% of the average living area of existing Multi-Family dwelling units.” As stated above “attached ADUs” are not subject to mandatory approval pursuant to Subdivision (e) and must be removed from Section 9.07.210 (E). However, Government Code section 65852.2, subdivision (c)(2)(C), which would apply to “attached ADUs”, prohibits “Any requirement for a zoning clearance or separate zoning review or 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, front setbacks, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.” Therefore, the City must add language to clearly state that an attached ADU may not be required to be smaller than 800 square feet.

Furthermore, the conversion of non-livable space within multifamily dwellings shall allow for at least one ADU and up to 25 percent of the existing multifamily dwelling units per Government Code section 65852.2, subdivision (e)(1)(C). Therefore, the 50 percent coverage area requirement of the Section 9.07.210 (E)(3)(g) must be amended to avoid conflict with the provision found in subdivision (e)(1)(C).

- Sections 9.07.210(E)(1)(i) and 9.07.210(F)(6) – Maximum Height –The Ordinance states “The maximum height for a JADU or ADU attached to a primary dwelling shall be the height of the underlying zoning district.” ADU statute restricts local agencies from requiring the height of attached and detached ADUs, to be less than either 16, 18, or 25 feet pursuant to Government Code section 65852.2, subdivisions (c)(2)(D) and (e)(1)(B)(ii). Where the height limitations in an underlying zoning district would restrict the maximum height to less than state requirements, the Ordinance must be amended to allow for the minimum height requirements in State ADU Law. Additionally, please note that the creation of ADUs or JADUs from proposed or existing space within the primary residence and the creation of ADUs from accessory structures are not subject to additional height limitations.
- Section 9.07.210(E)(1)(g) and Section 9.07.215(D)(4)(j) – Fire Walls –The Ordinance states “ADUs... attached to the primary dwelling shall contain a fire wall sufficient for fire retention.” Fire walls are required in several sections including but not limited to sections 9.07.210(E)(3)(b), 9.07.210(E)(3)(f), 9.07.210(F)(9)(d), and 9.07. 215(D)(4)(j). The additional requirement for attached ADUs may exceed those imposed by the City on other residential development, and thus, the Ordinance may be in violation of Government Code section 65852.2, subdivision (a)(8), which states that “no additional standards, other than those provided in this subdivision, shall be used or imposed.” For HCD to determine compliance with State ADU Law, please provide a) whether every wall attached to a residential building required to be a fire wall, and b) whether fire walls are required between a single-family home and an attached garage. Please include any citations or references to supporting statute, regulation or ordinance citation.
- Sections 9.07.210(E)(2)(g), 9.07.210(E)(4)(f) and 9.07.210(F)(7) – Separation from Other Structures – The Ordinance states that “The detached ADU shall maintain a ten (10) foot separation from the primary dwelling and any accessory structure(s) located on the property.”

However, Government Code section 65852.2, subdivisions (e)(1)(B) and (D) require that a local agency shall ministerially approve an application for detached ADUs. Therefore a

10-foot separation requirement cannot preclude an ADU created under these subdivisions and the City must amend the Ordinance to either remove this requirement or impose 10-foot separation only when feasible to allow for an 800 square foot detached ADU.

- Sections 9.07.210(E)(1)(j), 9.07.210(E)(2)(h), 9.07.210(E)(3)(h), 9.07.210(E)(4)(g), 9.07.210(F)(9)(k), 9.07.215(D)(4)(g) – Homeowner’s Association Approval – The Ordinance states that ADUs and JADUs “...shall be approved by the applicant’s homeowner’s association, if applicable, prior to an application being submitted to the City.” It also requires “written evidence of the HOA’s approval.” However, Government Code section 65852.2, subdivision (a)(6) states that a “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.” Therefore, the City cannot add an additional requirement for a Homeowner Association approval and must remove this section.
- Section 9.07.210(E)(3) – *Attached Multifamily ADU Allowance* – The Ordinance states that “An applicant shall be allowed to construct one (1) attached ADU within each multifamily dwelling structure.” As mentioned above “attached” ADUs are not found in Government Code section 65852.2, subdivision (e). Subdivision (e)(1)(C) allows for ADUs to be built within portions of an existing multifamily dwellings that are not used as livable space these are *conversion units*. Government Code section 65852.2, subdivision (e)(1)(C)(ii) requires that “A local agency shall allow **at least one** [conversion] accessory dwelling unit within an existing multifamily dwelling and shall allow **up to 25 percent** of the existing multifamily dwelling units.” Therefore, the allowance for only one unit violates state statute. Although Ordinance Section 9.07.210 (E)(3)(e) allows for up to 25 percent of existing multifamily dwellings, the approval is subject to additional development standards pursuant to Section 9.07.210 (H) process. This additional approval requirement violates the ministerial approval requirement pursuant to Government Code section 65852.2 (e)(1). The City must update this section with the language in subdivision (e)(1)(C)(ii) that permits “at least one” and “up to 25 percent of existing” units when ADUs are created out of converted space in a multifamily dwelling and remove section (E)(3)(e).
- Section 9.07.210(E)(3)(d) and (E)(4)(c) – Certificate of Occupancy – The Ordinance requires that, “A certificate of occupancy had been issued for the multi-family dwelling on or before January 1, 2020.” This section limits the construction of ADUs to multi-family dwellings that have been issued a certificate of occupancy on or before January 1, 2020. Government Code section 65852.2 (e)(1)(C) and (D) provides for the ministerial approval of ADU applications in multifamily dwelling structures that meet the requirements and conditions set forth in these subdivisions. A certificate of occupancy is not a requirement or condition for the ministerial approval for ADUs pursuant to this subdivision. Therefore, the City must remove this section.
- Section 9.07.210(F)(1)(a) and (F)(1)(c) – Local Restrictions – The Ordinance states “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).”

It later states “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 9.05.11 0(a)(4)(A), without obtaining a Site Development Permit pursuant to Section 9.07.210(H).”

The Ordinance does not indicate how ADUs impact public safety concerns associated with water, erosion, flood hazards, slope, or traffic safety, nor the proliferation of existing nonconforming structures. State Law requires local agencies to “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.” (Gov. Code, § 65852.2, subd. (a)(1)(A)). But the City has not established the impact of ADUs to public safety in the Flood Plain Overlay District or on lots with Hillside Conditions. Additionally, the Site Development Permit process is a discretionary process that violates Government Code section 65852.2, subdivision (a)(6) that requires “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.” Therefore, the City must remove this section of the Ordinance to comply with State ADU Law.

- Section 9.07.210(F)(1)(d) – *Existing Non-Conforming Structure or Use* – The Ordinance states “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).” However, Government Code section 65852.2, subdivision (d)(2) states that “the local agency shall not deny an application for a permit to create an accessory dwelling unit due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and are not affected by the construction of the accessory dwelling unit.” Therefore, the City must remove this section to comply with State ADU Law.
- Section 9.07.210(F)(1)(e) – *Location Restriction, Fire* – “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)...” The Site Development Permit process is discretionary in violation of Government Code section 65852.2, subdivision (a)(6) that requires “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.” The City of Dana Point, in conjunction with the Orange County Fire Authority, and the State of California Office of the State Fire Marshal has adopted the current version of the Very High Fire Hazard Severity Zone (VHFHSZ), Ember Zone 1 and Ember Zone 2 Fire Areas.

However, while CalFire maps establish the Very High Fire Hazard Severity Zones that impact building design standards (such as required building materials), these zones do

not limit the locations where ADUs may be permitted. The Very High Fire Hazard Severity Zone map of Dana Point provided on the Cal Fire website states, "The California Building Commission adopted California Building Code Chapter 7A requiring new buildings in VHFHSZs to use ignition resistance of buildings, especially from firebrands. The updated very high fire hazard severity zones will be used by building officials for new building materials in the Local Responsibility Area. The updated zones will also be used to identify property whose owner must comply with natural hazards disclosure requirements at time of property sale and 100- foot defensible space clearance." (Emphasis added.) These building standards and requirements do not prohibit the siting of ADUs. Therefore, the City must remove this discretionary permit process for ADU applications within the Fire Ember Zone.

- Section 9.07.210(F)(5) – Required Setbacks: The Ordinance states that all ADUs “must also strictly comply with the front yard setback requirement of the underlying zoning district...” However, Government Code section 65852.2, subdivision (c)(1)(C) states that a local agency may not impose “Any requirement for...front setbacks that would not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.”. Therefore, ADUs may be located partially or entirely in the front setback. The City must amend the Ordinance to comply with State ADU Law.
- Section 9.07.210(F)(8)(d) – Limitation on the Number of Bedrooms – The Ordinance states, “An ADU shall contain no more than two bedrooms.” Limiting the number of bedrooms within an ADU may constrain housing choice and result in discriminatory effects on families with children, people with disabilities, and other protected groups in violation of state and federal fair housing laws, including but not limited to Government Code section 65008, subdivisions (a)(1)(A) and (b)(1)(B)(i). Therefore, the City should remove this section.
- Section 9.07.210(F)(9)(f) – Additional Conditions – The Ordinance states that “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” However, “architecturally consistent” and “similar” may be subjective in application, and therefore may violate Government Code section 65852.2, subdivision (a)(6), that requires ministerial approval and prohibits discretionary processes. Subdivision (a)(1)(B)(i) allows the City to impose objective standards on dwelling units and pursuant to subdivision (j)(7), objective 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.” Therefore, the City must amend or clarify the Ordinance to comply with State ADU Law.
- Section 9.07.210(F)(9)(g) – Solar Panels – The Ordinance states that “Solar panels shall be required for any attached or detached ADU.” Be advised that newly constructed, non-manufactured, detached ADUs may be subject to the California Energy Code requirement (excluding manufactured homes) to provide solar systems. Per the California Energy Commission (CEC), the solar systems 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 systems. (ADU July 2022 Handbook, page 23.) The City should ensure that its solar requirements comply with the California Energy Code.

- Section 9.07.210(F)(9)(h) – Historic Register – The Ordinance states that an ADU 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.” This is not consistent with State ADU Law. Under Government Code section 65852.2 subdivision (a)(1)(B)(i), an ordinance may “impose standards on accessory dwelling units ... that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources.” Locally registered resources that are not also state listed would not fall within this provision. The Ordinance should be revised to limit sites to those allowed by State ADU Law.
- Section 9.07.210(F)(9)(j) – *Placement Limitations* – The Ordinance requires “detached ADUs to be located only in the rear ½ of the parcel and attached ADUs to be located only in the rear ½ of the primary dwelling.” However, Government Code section 65852.2, subdivision (c)(2)(C), prohibits “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, front setbacks, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.” Because the subdivision prohibits restrictions on front setback requirements, detached and attached ADUs may also be placed in the front of the parcel and front half of the primary dwelling. Therefore, the City must remove this limitation.
- Section 9.07.210 (H) – Nonministerial Process – The Ordinance has numerous references to Section 9.07.210(H) as a discretionary process to be used in the event of an ADU application exceeds standards in the Ordinance: Section 9.07.210 subdivision (H) describes a “discretionary Site Development Permit in accordance with Dana Point Zoning Code Chapter 9.71.” Unless these Site Development Permits are required by the City’s Local Coastal Plan (LCP), this violates Government Code section 65852.2, subdivision (a)(6) which requires that “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. Therefore, the City should either clarify any applicable LCP requirements or remove all references to Section 9.07.210(H) for any ADU built in accordance with Government Code section 65852.2, subdivision (a) or (e).
- Section 9.07.215(C)(2) – *Application Processing* – “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.” However, the “satisfaction of the Director” is discretionary and subjective. Government Code section 65852.22, subdivision (c)(1) states “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.” Therefore, the City must remove the referenced phrase.
- Section 9.07.215(C)(3)(b) – Application Approval – The Ordinance states the application

shall be approved " 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. It is difficult to determine what underlying development standards in the zoning district or other applicable overlay district requirements would apply to improvements located entirely within an existing or proposed structure. Standards within an underlying zone may apply when noted in the adopted ADU ordinance but cannot be more restrictive than those contained in state statute. The City should clarify underlying development standards in the zoning district, as well as any applicable overlay district in which the lot is located, will apply if they are not more restrictive than those contained in state statute.

- Section 9.07.215(D)(4)(c) – Nonconforming Dwelling – “No JADU shall be constructed in any dwelling that is non-conforming with respect to structure or use.” However, Government Code section 65852.22 (d) states that “a local agency shall not deny an application for a permit to create a junior accessory dwelling unit pursuant to this section due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and that are not affected by the construction of the junior accessory dwelling unit.” Therefore, the City must remove this section of the Ordinance.
- Section 9.07.215(D)(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.” However, JADUs must be approved ministerially, without discretionary review or a hearing, per Government Code section 65852.2, subdivision (a)(3). 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.” (Gov. Code, § 65852.2, subd. (a)(3) and Gov. Code, § 65852.22, subd. (c)). Therefore, the City cannot require the pre-application and approval of these associated permits, as a condition for accepting an application for a JADU permit. It is also unclear how a JADU located entirely within a single-family dwelling would trigger a discretionary permit. The City must remove this section of the Ordinance.

In response to the findings in this letter, and pursuant to Government Code section 65852.2, subdivision (h)(2)(B), the City must either amend the Ordinance to comply with State ADU Law or adopt the Ordinance without changes. Should the City choose to adopt the Ordinance without the changes specified by HCD, the City must include findings in its resolution that explain the reasons the City finds that the Ordinance complies with State ADU Law despite the findings made by HCD. Accordingly, the City’s response should provide a plan and timeline to bring the Ordinance into compliance.

Please note that, pursuant to Government Code section 65852.2, subdivision (h)(3)(A), if the City fails to take either course of action and bring the Ordinance into compliance with State ADU Law, HCD may notify the City and the California Office of the Attorney General that the City is in violation of State ADU Law.

HCD appreciates the City’s efforts provided in the preparation and adoption of the Ordinance and welcomes the opportunity to assist the City in fully complying with State ADU Law. Please feel free to contact Mike Van Gorder of our staff, at (916) 776-7541 or at mike.vangorder@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink that reads "Shannan West". The signature is written in a cursive style with a large initial "S" and a long, sweeping underline.

Shannan West
Housing Accountability Unit Chief

STATE OF CALIFORNIA - BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY

GAVIN NEWSOM

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
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April 5, 2023

Brenda Wisneski, Community Development Director
 Community Development Department
 City of Dana Point
 33282 Golden
 Lantern Dana Point,
 CA 92629

Dear Belinda Deines:

RE: City of Dana Point's Accessory Dwelling Unit Ordinance – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) thanks the City of Dana Point (City) for its response to HCD's January 13, 2023 written findings ("findings letter") of non-compliance. On February 13, 2023, the City sent a written response, signed by Principal Planner Belinda Deines, to HCD's written findings. HCD appreciates the letter's stated commitment to amend the City's accessory dwelling unit (ADU) ordinance and looks forward to reviewing the amended ordinance for compliance with State ADU Law upon its adoption.

However, on February 8 and February 16, 2023, HCD contacted the City regarding an ADU applicant's complaint against the City. The complaint in question arose over the City's denial of an ADU application due to the primary dwelling unit possessing a nonconforming zoning condition. HCD acknowledged that such a denial would be in violation of Government Code section 65852.2, subdivision (d)(2), which states, "The local agency shall not deny an application for a permit to create an accessory dwelling unit due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and are not affected by the construction of the accessory dwelling unit."

This issue would be resolved with the City approving ADU applications in compliance with state law. Community Development Director Brenda Wisneski replied¹ in an email on February 16, 2023 to say that staff anticipates having a new ordinance adopted in May of 2023. It appears that the City intends to wait for the City Council amendments to pass before processing the ADU application. The purpose of this letter is to provide the

¹ It should here be noted that, prior to mailing the January 13 findings letter, HCD received numerous complaints about the City's noncompliance with State ADU Law. While it is beyond the scope of this letter to enumerate the complaints, HCD is concerned that the City's first response to

a complaint after sending the February 13 letter, does not indicate of an intent to comply with State ADU Law.

City technical assistance regarding its obligation to continue permitting ADUs according to State ADU Law even in the absence of a compliant ADU ordinance.

Refusing to process ADU permits would be unlawful and in violation of state law, including but not limited to State ADU Law (Gov. Code, §§ 65852.150, 65852.2, 65852.22) and the Housing Crisis Act (HCA) of 2019 (Gov. Code, § 66300).

State ADU Law

HCD's findings letter informed the City that its ordinance is noncompliant. While the City works on adopting a new ordinance, it remains obligated to process ADU applications per Government Code section 65852.2, subdivisions (a)(3)(A) and (b)(1), which require a permitting agency to "either approve or deny [an] application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application." Moreover, subdivision (a)(3)(A) states that "[i]f the local agency has not approved or denied the completed application within 60 days, the application shall be deemed approved."

In addition, the City, upon denying an ADU or JADU application, must provide "in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant" (Gov. Code, § 65852.2, subd. (b)(2)).

Notably, Government Code section 65852.2, subdivision (a)(7), states, "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." The absence of a compliant ordinance; therefore, cannot preclude the City from acting to approve or deny a permit to create an ADU.

Housing Crisis Act of 2019

This kind of delay may also constitute a violation of provisions of the HCA. The HCA prohibits a local government from "enact[ing] a development policy, standard, or condition" that would have the effect of "[c]hanging the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use or reducing the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district in effect at the time of the proposed change, below what was allowed under the land use designation or zoning ordinances ... in effect on January 1, 2018." (Gov. Code, § 66300, subd. (b)(1)(A).) The statute defines "reducing the intensity of land use" to include "any other action that would individually or cumulatively reduce the site's residential development capacity." (*Ibid.*)

Clearly, refusing to process ADU permits would have the effect of reducing the residential development capacity of sites across the City, in violation of the HCA. The HCA also prohibits a local government from "[i]mposing a moratorium or similar restriction or limitation on housing development ... within all or a portion of the jurisdiction ... other than to specifically protect against an imminent threat to the health and safety of persons residing in, or within the immediate vicinity of, the area subject to the moratorium" (Gov. Code, § 66300, subd. (b)(1)(B)(i).) Moreover, the local government shall not enforce restrictions or limitations on a housing development until it has submitted their ADU ordinance to and have received approval from HCD. (Gov. Code, § 66300, subd. (b)(1)(B)(ii).) If HCD denies approval, "that ordinance shall be deemed void." (*ibid.*)

Conclusion

HCD would like to remind the City that HCD has enforcement authority of State ADU Law, the Housing Crisis Act, and other state housing laws. If HCD finds that a city's actions do not comply with state law, HCD may notify the California Office of the Attorney General that the local government is in violation of state law (Gov. Code, § 65585, subd. (j)).

In summary, the City must continue processing ADU applications in compliance with state law. HCD will continue to monitor the City's actions and inactions and will respond in order to remedy any violations.

HCD appreciates the City's efforts in revising its ordinance and welcomes the opportunity to assist the City in fully complying with State ADU Law. Please contact Mike Van Gorder of our staff, at (916) 776-7541 or at mike.vangorder@hcd.ca.gov for more information.

Sincerely,

Jamie Candelaria

Jamie Candelaria
Senior Housing Accountability

Manager cc: Belinda Deines, Principal

Planner