

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

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December 10, 2024

Brenda Wisneski, Director of Community Development
City of Dana Point
City Attorney's Office
33282 Golden Lantern,
Dana Point, CA 92629

Dear Brenda Wisneski:

**RE: City of Dana Point Non-Compliant Ordinance and Implementation Under State
Accessory Dwelling Unit (ADU) Law – Notice of Violation**

On June 28, 2024, the California Department of Housing and Community Development (HCD) sent the City of Dana Point (City) a Letter of Findings (incorporated by reference) regarding the City's non-compliant ADU ordinance (Ordinance). On September 3, 2024, the City passed resolution 24-09-03-04 in response to HCD's findings. The resolution affirms the City's intention to continue to implement its non-compliant Ordinance rather than apply the standards in State ADU Law,¹ as required.²

Where HCD finds that a local agency's ordinance does not comply with State ADU law, HCD must issue written findings to the local government.³ Additionally, if the local agency does not amend its ordinance in response to HCD's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with State ADU Law and addressing HCD's findings, HCD shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.⁴ Finally, where HCD finds that a local agency has taken action to violate state housing laws, HCD shall notify the local agency and may notify the Attorney General.⁵

HCD hereby notifies the City that it is in violation of State ADU Law and the Permit Streamlining Act (PSA).⁶

¹ Gov. Code, §§ 66310-66342.

² Gov. Code, §§ 66316; 66325, subd. (a).

³ Gov. Code, § 66326, subd. (b)(1).

⁴ Gov. Code, § 66326, subd. (c)(1).

⁵ Gov. Code, § 65585, subd. (j).

⁶ Gov. Code, § 65920, et seq.

Background

HCD's records are as follows:

- On October 28, 2022, an applicant requested HCD's assistance as the City improperly denied a proposed ADU application at 26525 Via Sacramento, Dana Point, CA 92624 (**Sacramento**). The City rejected HCD's guidance offered via the applicant. This led HCD to review the City's ADU Ordinance No. 21-06.
- On January 13, 2023, HCD issued its review of the City's ADU Ordinance No. 21-06 via an ADU Findings Letter (incorporated by reference). The letter identified more than 25 places in the Ordinance No. 21-06 that are non-compliant with State ADU Law.
- On February 13, 2023, the City responded to the Findings Letter and indicated the City intended to update their ADU ordinance in May 2023.
- On April 5, 2023, subsequent to HCD receiving continued complaints about application processing, HCD sent the City a Letter of Technical Assistance, advising the City that it must approve or deny ADU applications pursuant to State ADU Law until such time their ordinance was brought into compliance.
- On May 2, 2023, HCD and City staff met virtually to discuss HCD's findings and letters. HCD re-affirmed that the City must process ADU applications pursuant to State ADU Law and admonished the City that Ordinance No. 21-06 is superseded by State ADU Law pursuant to Government Code section 66325 and was null and void pursuant to section 66316.
- On July 18, 2023, the City passed ADU Ordinance 23-06, along with Resolution 23-06-20-01, adopted with findings, as required by law, explaining the reasons the City believes its Ordinance is compliant.⁷
- On January 29, 2024, HCD emailed the City to inquire and request records about a constituent complaint regarding the City's disapproval of a proposed ADU at 33772 Silver Lantern, Dana Point, CA 92629 (**Silver Lantern**). The City's response failed to account for its actions and the records omitted the information HCD requested.⁸
- On February 13, 2024, HCD began investigating a denial of a proposed ADU at 33861 Malaga Dr., Dana Point, CA 92629 (**Malaga**) after receiving a complaint from a housing organization.⁹

⁷ Gov. Code, § 66326, subd. (b)(2).

⁸ HCD Correspondence with City of Dana Point RE: Silver Lantern ADU Application, February 2024.

⁹ California Housing Defense Fund, Letter to the City of Dana Point, September 11, 2023.

- On May 19, 2024, HCD emailed the City to inquire about the City's disapproval of an ADU application at 34361 Via San Juan, Dana Point, CA 92624 (**San Juan**). HCD affirmed that the City must not subject ADUs and junior accessory dwelling units (JADUs) that qualify for mandatory ministerial approval to a discretionary process and that the application for the San Juan project is deemed approved and the City must issue a permit and allow the unit to be inspected for permission to use and occupy. The City failed to respond and failed to approve the project.¹⁰
- On June 28, 2024, HCD sent an ADU Findings Letter of Non-Compliance regarding the City's Ordinance No. 23-06. The City had 30 days to respond. HCD re-affirmed that the City must process applications in accordance with State ADU Law until it adopts a new ordinance that is compliant. The City requested an extension for a response, which HCD granted.
- On July 25, 2024, HCD received a complaint from an ADU applicant at 26941 Calle Dolores, Dana Point, CA 92624 (**Dolores**). The complainant offered documentation that the City intends to continue using its non-compliant Ordinance in reviewing ADU and JADU applications, among other unlawful actions.¹¹
- On August 2, 2024, HCD requested the City acknowledge statutory guidance that until such a time the Ordinance is compliant, ADU applications must be processed under State ADU Law, not the City's current non-compliant Ordinance. The City failed to acknowledge the law, specifically Government Code section 66316, which declares an ADU ordinance that fails to comply with State ADU Law null and void unless and until the agency adopts a compliant ordinance.
- On September 3, 2024, the City passed resolution 24-09-03-04 in response to HCD's findings, affirming the City's intention to continue to implement its non-compliant Ordinance.

Analysis

HCD has notified the City multiple times about its non-compliant Ordinance and about the requirement to apply state standards until the Ordinance complies with state law. While the City claims that it will update the Ordinance by February 2025, the Resolution repudiates all of HCD's findings, and the City continues to utilize its non-compliant Ordinance in violation of State ADU Law. Specifically, the City unlawfully:

¹⁰ HCD correspondence with City of Dana Point, RE: San Juan ADU Application, May and June 2024.

¹¹ Dolores ADU pre-application correspondence with City of Dana Point, July 23, 2024.

1. Disapproves and denies ADU and JADU applications by imposing objective design and development standards on ADUs that qualify for exemption from such standards.¹²
2. Disapproves and denies ADU and JADU applications due to non-conforming zoning conditions (NZCs), though State ADU Law precludes denials for this reason.¹³
3. Imposes restrictions beyond what is permitted¹⁴ and that exceed the maximum standards allowed on ADUs created on lots with single-family residences.¹⁵
4. Reviews ADU and JADU applications using discretionary consideration it is precluded from using.¹⁶
5. Fails to provide adequate determinations of completeness and denial for ADU and JADU applications.¹⁷
6. Fails to approve or deny ADU and JADU applications ministerially within required timelines of receiving a completed application.¹⁸
7. Disapproves and denies ADU applications based on improperly designating areas ADUs may be permitted within areas zoned to allow single-family and multifamily uses.¹⁹
8. Disapproves, delays, and denies ADU and JADU applications based on local policies and regulations other than a compliant ADU and JADU ordinance.²⁰
9. Prevents homeowners from applying for the total number of allowable ADUs and JADUs.²¹
10. Imposes subjective standards on ADUs inconsistent with the requirement to impose only objective standards.²²
11. Imposes standards on JADUs that qualify for exemption, thereby disapproving and denying JADU applications.²³

¹² Gov. Code, § 66323. See Senate Bill (SB) 1211 (Chapter 296, Statutes of 2024), which amends Government Code section 66323, subdivision (b), to read: “A local agency shall not impose any objective development or design standard that is not authorized by this section upon any accessory dwelling unit that meets the requirements of ... subdivision (a).”

¹³ Gov. Code, §§ 66322, subd. (b); 66323, subd. (b).

¹⁴ Gov. Code, § 66314, subd. (b)(1).

¹⁵ Gov. Code, § 66315.

¹⁶ Gov. Code, §§ 66316; 66320, subd. (a); 66323.

¹⁷ Gov. Code, §§ 65943, subd. (a); 66317, subd. (b); 66320, subd. (b).

¹⁸ Gov. Code, §§ 65943, subd. (a); 66317, subd. (a); 66320, subd. (a).

¹⁹ Gov. Code, § 66314, subd. (a).

²⁰ Gov. Code, § 66317, subd. (c).

²¹ Gov. Code, § 66323, subd. (a).

²² Gov. Code, § 66314, subd. (b).

²³ Gov. Code, § 66333, et. seq.

12. Prohibits the conversion of “existing” and “non-conforming” space by imposing an unlawful restriction on ADUs for certain existing buildings and structures.²⁴

The City’s ADU Ordinance imposes various standards, and the City takes actions that do not comply with state law, as explained in HCD’s multiple findings letters and in the findings in Appendix A (incorporated herein).

State law prohibits the City from enforcing these standards. Government Code section 66315 states that “[n]o additional standards, other than those provided in Section 66314, shall be used or imposed” by local jurisdictions in evaluating ADUs. Section 66325 expressly provides that local ordinances that conflict with state law are superseded by state law. The City’s ordinance conflicts with state law and imposes standards beyond what state law permits; therefore, the City’s ordinance is superseded by State ADU Law²⁵ and null and void, and the City must apply only state standards to evaluate ADU and JADU applications unless and until it revises the Ordinance to comply with state law.²⁶

State ADU Law also requires a local agency to submit a copy of its ADU ordinance to HCD for review and evaluation, and vests in HCD the authority to issue written findings as to whether the ordinance is compliant with state law.²⁷ Pursuant to its statutory authority, HCD has found that the City’s Ordinance fails to comply with state law and is thus null and void.

Moreover, HCD is aware of numerous ADU applications, including those referenced in this Notice and Appendix A, where the City has breached its duty to apply only state ADU and JADU standards in its ministerial review of applications and instead imposed its own non-compliant standards.

Housing Element

Furthermore, as part of the City’s adopted housing element certified by HCD, the City intends to permit ten ADUs a year and update its ADU Ordinance to comply with state law.²⁸ However, according to the City’s Annual Progress Report data, the City is behind this goal by half²⁹ and its Ordinance remains out of compliance.

²⁴ Gov. Code, §§ 66314, subd. (d)(3); 66323, subd. (a).

²⁵ Gov. Code, § 66325, subd. (a).

²⁶ Gov. Code, § 66316.

²⁷ Gov. Code, § 66326, subds. (a), (b).

²⁸ City of Dana Point Housing Element, Program 1.3, Accessory Dwelling Units, pg. H-169.

²⁹ HCD Annual Progress Report Data, City of Dana Point.

HCD reminds the City that if it determines any action or failure to act is inconsistent with an adopted housing element, including failure to implement any program in the housing element, HCD is authorized to revoke the City's housing element compliance. The City should also be aware that as of January 1, 2025, in any action to enforce State ADU Law by HCD or the Attorney General, the City may be subject to civil penalties and other fines.³⁰

Conclusion and Next Steps

The City has failed to amend Ordinance No. 23-06 to comply with Government Code sections 66314-66342, takes actions contrary to the PSA and the HCA, and refuses to apply the standards in State ADU Law. As a result, the City is in violation of state housing law.

As a reminder, if HCD finds that a city's actions do not comply with State ADU Law, HCD may notify the Office of the Attorney General that the local government is in violation of state law.³¹ The City has 30 days to respond to this Notice of Violation and must provide a written response and plan of action to remedy the violations of State ADU Law no later than January 9, 2025. HCD will consider this response before taking further action authorized by state law.

If you have any questions or would like to discuss the contents of this letter, please contact Jamie Candelaria at Jamie.Candelaria@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Zisser', with a long horizontal stroke extending to the right.

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability

cc: Patrick Munoz, City Attorney

³⁰ Senate Bill 1037 (Chapter 293, Statutes of 2024) adds section 65009.1 to the Government Code.

³¹ Gov. Code, §§ 65585, subd. (j); 66326, subd. (c)(1).

Appendix A: Findings – City of Dana Point’s ADU and JADU Ordinances

1. Objective Standards on Exempted ADUs

The City requires ADUs and JADUs to follow underlying development standards and other objective standards irrespective of their status as exempt from a local agency’s objective design and development standards when they meet specified criteria.³² However, ADUs created per Government Code section 66323 are exempt from development standards authorized in sections 66314 to 66322.³³

The City’s Ordinance states, “The development standards set forth below shall apply to all non-mandatory ADUs. For any development standard not explicitly identified below, the requirements of the underlying zoning district shall apply, unless superseded by State Law.”³⁴ The Ordinance clarifies that “mandatory ADUs” are those established by Government Code section 66323, but then qualifies that the preceding section is “subject to the exceptions” it then imposes on all ADUs, despite stating that this section only applies to “non-mandatory ADUs.” Even within the Ordinance section that governs ADUs described under section 66323,³⁵ the City imposes requirements such as location requirements and standards including but not limited to overlay zones, additional parking requirements, conformance with underlying zoning conditions,³⁶ front setbacks,³⁷ a 10-foot separation between a detached ADU and the primary dwelling or any accessory structure,³⁸ and other development standards which cannot be imposed.

The City also uses definitions not authorized by State ADU Law which impose restrictions on ADUs described in Government Code section 66323.³⁹ For example, the City deems “Attached ADUs” as ADUs “*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 [ADU] that is located *within a proposed or existing primary dwelling*

³² Dana Point Municipal Code (DPMC) §§ 9.07.210 (D)(4)(b), (C)(1), (F)(1), 9.07.215 (C)(4)(b); (D); HCD Letter of Findings to Dana Point, June 28, 2024, available at <https://www.hcd.ca.gov/sites/default/files/docs/policy-and-research/ordinance-review-letters/dana-point-adu-findings-062824.pdf>.

³³ Gov. Code, § 66323, subd. (a), (1)-(4). See Senate Bill (SB) 1211 (Chapter 296, Statutes of 2024), which amends Government Code section 66323, subdivision (b), to read: “A local agency shall not impose any objective development or design standard that is not authorized by this section upon any accessory dwelling unit that meets the requirements of ... subdivision (a).”

³⁴ DPMC § 9.07.210 (F).

³⁵ DPMC § 9.07.210 (E).

³⁶ DPMC §§ 9.07.210 (E)(1)(i), 9.07.210 (E)(1)(j), 9.07.210 (E)(1)(k); 9.07.210 (E)(2)(g), 9.07.210 (E)(2)(g), 9.07.210 (E)(2)(h), 9.07.210 (E)(2)(i); 9.07.210 (E)(3)(g), 9.07.210 (E)(3)(h), 9.07.210 (E)(3)(i); 9.07.210 (E)(4)(g), 9.07.210 (E)(4)(h), 9.07.210 (E)(4)(i).

³⁷ DPMC § 9.07.210 (F).

³⁸ DPMC § 9.07.210 (E)(2)(g).

³⁹ DPMC § 9.07.210 (B)(2), (B)(4).

or accessory structure....” (Emphasis added).⁴⁰ The City’s definition is subjective, misleading, and incorrect. Under the City’s definition, ADUs created within proposed or existing space, even detached structures, or ADUs detached from the primary dwelling but attached to an accessory structure, are labeled an “Attached ADU.” However, the City’s definition is inconsistent with State ADU Law definitions. The City has no authority to impose definitions that create additional development or design standards on ADUs created under Government Code section 66323.⁴¹ Nevertheless, the City imposes additional standards on section 66323 ADUs; such standards may only apply to ADUs attached to a primary dwelling found in section 66314. For example, the City limits state mandated ADUs created from existing space to be “50% of the living area of the primary dwelling.” However, section 66323 ADUs that meet the requirements of subdivision (a) are not subject to this requirement, but instead are limited to being “...within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure....”⁴²

The City admitted its awareness that units created per section 66323 are exempt from zoning standards not contained in section 66323.⁴³ The City further states it added section 9.07.210(C)(1) to the Ordinance as 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.”⁴⁴ When HCD finds a local agency’s ADU ordinance to be non-compliant, local agencies have a duty to amend an ADU ordinance or make findings regarding why the City believes it is compliant.⁴⁵

Moreover, the City disapproved and denied ADU applications for 66323 ADUs by imposing additional development standards in violation of State ADU Law. For example, the **Malaga** ADU application is to create an ADU exempt from imposition of the City’s development and design standards, requiring only a building permit.⁴⁶ The City nonetheless denied the applicant an appeal, unlawfully considering setback requirements, lot coverage, and parking, among other standards the City Council could not legally consider.⁴⁷ The **Sacramento** application sought to create a similarly constructed detached ADU requiring only building permits.⁴⁸ The application as originally proposed was not required to correct a setback for an existing multifamily dwelling structure with setbacks less than four feet as a condition of ADU application

⁴⁰ DPMC § 9.07.210 (B)(2).

⁴¹ Gov. Code, §§ 66313; 66314; 66315.

⁴² Gov. Code, § 66323, subd. (a)(1).

⁴³ City of Dana Point Resolution NO. 24-09-03-04, pg. 7.

⁴⁴ City of Dana Point Resolution NO. 24-09-03-04, pg. 5.

⁴⁵ Gov. Code, § 66326, subd. (b).

⁴⁶ City of Dana Point City Council Agenda Report, November 7, 2023, pg. 62, available at <https://www.danapoint.org/home/showpublisheddocument/37786/638493738049270000>.

⁴⁷ Ibid. at pg. 7.

⁴⁸ Sacramento ADU Application.

approval.⁴⁹ Nevertheless, the City improperly denied the application for not complying with the City's ten-foot setback requirement, again violating State ADU Law.⁵⁰

HCD has been notified of several other applications and potential applications the City has disapproved or denied unlawfully by imposing development standards on ADUs exempted from such standards.

2. Denial of Applications – Non-conforming Zoning Conditions (NZCs)

The City denies ADUs and JADUs for existing NZCs, specifically non-conforming parking and driveway conditions. However, non-conforming parking and driveways are site conditions which cannot be the basis for delay or denial of an ADU or JADU application.⁵¹ The statute provides, "Notwithstanding any other law," local agencies are prohibited from denying ADU and JADU applications for non-conformances unaffected by the ADU that do not present public health and safety issues.⁵² Furthermore, State ADU Law prohibits local agencies from requiring an applicant to correct NZCs for ADUs created under section 66323, and such ADUs are not subject to the City's underlying development standards.⁵³

The Ordinance states, "Due to *public safety*, public nuisance, and *traffic flow* concerns, no ... ADU or...JADU shall be constructed 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...."(Emphasis added.)⁵⁴ Here, the City references language from a separate provision that authorizes the City to "[d]esignate areas within the jurisdiction of the local agency where [ADUs] may be permitted... be based on ... the impact of [ADUs] on *traffic flow* and *public safety*."⁵⁵ However, this is a misrepresentation of State ADU Law.

Here, the City designates conditions instead of areas. The City asserts that in certain areas, residents are unable to find street parking, which results in sidewalk ingress and egress being impeded by vehicles. The City concludes that the development of ADUs on parcels with nonconforming "parking or driveway length *could* impact traffic flow and public safety." (Emphasis added.) The City's evidence that ADUs "impact" traffic flow is not evidence of a public health and safety issue. Additionally, State ADU Law precludes such conditions from being criteria for denial due to their "correction," unless a particular ADU or JADU application, if constructed, would be affected by an existing NZC that also presents a threat to public health or safety.⁵⁶

⁴⁹ Gov. Code, §§ 66323, subds. (a)(4)(B); (b).

⁵⁰ City of Dana Point Denials of Sacramento ADU application, February 1, 2023.

⁵¹ Gov. Code, §§ 66322, subd. (b); 66323, subd. (b); 66336.

⁵² Gov. Code, §§ 66322, subd. (b); 66336.

⁵³ Gov. Code, § 66323, subd. (b).

⁵⁴ DPMC §§ 9.07.210 (F)(1)(c); 9.07.215 (D)(4)(c).

⁵⁵ Gov. Code, § 66314, subd. (a). (Emphasis added.)

⁵⁶ Gov. Code, §§ 66322, subd. (b); 66336.

Additionally, the City has disapproved and denied ADU applications with parking and driveway NZCs exempted from such standards.

The **San Juan** ADU Application proposed an ADU of approximately 486 square feet built within a storage area of an existing duplex. This ADU qualifies for ministerial approval, requiring only a building permit.⁵⁷ The City denied the application several times, pursuant to its 2021 ordinance, because the “duplex development is substandard with reference to minimum parking requirements for a duplex...the development is nonconforming.”⁵⁸ The City’s disapproval violates State ADU Law.

The **Malaga** ADU application, which also only required a building permit, “contains a 5-foot-long driveway, instead of the 20 feet long driveway as required” in the City’s zoning code. The City used this criterion in its denial, citing zoning non-conformance. However, parking requirements are exempted for ADUs created within existing or proposed space or otherwise part of the primary residence.⁵⁹ The City’s disapproval violates State ADU Law.

Both applications proposed converting ADUs from existing space and thus no parking standards can be imposed under state law.⁶⁰ Therefore, both proposed ADU applications are exempt from approval being contingent on correcting (or failing to correct) NZCs.⁶¹ Both applications are consistent with State ADU Law and should not be disapproved or denied on this basis.

The **Silver Lantern** ADU application proposed to convert a detached garage and expand the building footprint to attach to the existing single-family dwelling resulting in an ADU totaling 397 square feet. The City disapproved the application because the existing “detached structure which would be converted into an ADU is non-conforming,” as it is “within the 4-foot required setback....”⁶² However, State ADU Law exempts setbacks for this type of ADU partially converting existing space.⁶³ The City also subsequently denied the application, or failed to accept it, because it is a single-family dwelling in a multifamily zone and thus an NZC.⁶⁴ HCD has been notified that the City has denied and disapproved similar applications, in violation of State ADU Law.

⁵⁷ Gov. Code, § 66323, subd. (a).

⁵⁸ Citing DPMC § 9.07.210 (F)(1)(D).

⁵⁹ Gov. Code, §§ 66323, subd. (a); 66322, subd. (a)(1).

⁶⁰ Gov. Code, § 66322, subd. (a)(3).

⁶¹ Gov. Code, § 66323, subd. (b).

⁶² Correspondence from City of Dana Point, May 11, 2022.

⁶³ Gov. Code, § 66314, subd. (d)(7).

⁶⁴ Correspondence from City of Dana Point, August 23, 2023.

3. Denial of Applications – Impermissible Additional Requirements

The City's Ordinance unlawfully imposes additional requirements on ADUs created per Government Code sections 66314 and 66323. Section 66323 ADUs require only a building permit, and are not subject to the City's objective standards, while section 66314 ADUs allow for ministerial planning permit review pursuant to objective standards authorized by state law.⁶⁵ HCD continues to notify the City of its unlawful requirements in multiple findings letters; however, the City has failed to comply and amend its Ordinance.

For example, the City's Ordinance mandates deed restrictions.⁶⁶ However, Government Code section 66315 establishes that "[n]o additional standards, other than those provided in Section 66314, shall be used or imposed." Section 66314, subdivision (b)(1) allows for local objective standards, but the examples provided in the statute all relate to design and development standards, not to requirements such as a deed restriction that could, in some circumstances, render the provision of an ADU infeasible.

HCD is aware of applications the City has disapproved and denied by unlawfully imposing additional restrictions on ADUs exempt from such standards in violation of State ADU Law.

4. Denial of Applications – Discretionary Review

The City diverts ADU and JADU applications through discretionary review, contrary to State ADU Law. The City does this by requiring ADUs it "could prohibit" to obtain a Site Development Permit (SDP), which is a discretionary review.⁶⁷ The City also requires evidence of homeowners' association (HOA) "approvals" concurrent with the application.⁶⁸ As noted in all of HCD's findings letters to the City, these provisions are contrary to State ADU Law. Despite this, the City refuses to remove such provisions.

Homeowners Associations (HOAs)

The City's requirement for an ADU or JADU applicant to obtain prior HOA approval is a discretionary act "that is no different than allowing an interested member of the public to exercise quasi-judicial approval over the City's ministerial process."⁶⁹ Such discretion exceeds the maximum objective standards permitted by State ADU Law.

⁶⁵ Gov. Code, § 66314, subd. (b)(1).

⁶⁶ DPMC § 9.07.210 (F)(3).

⁶⁷ DPMC § 9.07.210 (D); (H).

⁶⁸ DPMC §§ 9.07.210 (F)(8)(j); 9.07.215 (D)(4)(g).

⁶⁹ HCD Letter of Technical Assistance to Placentia, November 27, 2023, pg. 2, available at <https://www.hcd.ca.gov/sites/default/files/docs/policy-and-research/ordinance-review-letters/placentia-adu-ta-112723.pdf>.

The City insists that “State Law does not prohibit cities from requiring HOA approval...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....” The City cites no legal authority to enforce private regulations that are in contravention of state law. Moreover, the City is prohibited from delaying or denying ADU and JADU applications due to local ordinances, policies, or regulations that are inconsistent with State ADU Law.⁷⁰ HCD has received constituent complaints that the City in fact does use HOA discretion in its review of ADU applications.⁷¹ This is in direct violation of the law.

Site Development Permits (SDP)

As noted in Violations 1, 2, 4 and 7, the City denies applications for unlawful reasons and then diverts such applicants to an SDP process. However, a city’s ADU ordinance must provide for ministerial approvals of ADUs and JADUs, without any discretionary review.⁷² Moreover, when a city denies an ADU or JADU application, it must provide a list of reasons and clear remedies for the applicant to comply ministerially rather than attempt to divert such applications through a discretionary process. The City claims, incorrectly, it is being “less restrictive” than State ADU Law when it requires such applications to obtain an SDP.⁷³ While HCD encourages local agencies to provide a permitting pathway for ADUs and JADUs that do not comply with local or State ADU Law, the SDP process poses a risk of imposing discretionary review on otherwise compliant ADUs, especially where the City is misapplying the law and unlawfully disapproving ADUs.

HCD has been notified of several application denials, including the **Dolores, Malaga, Sacramento, San Juan, Silver Lantern** applications, and applicants are forced to obtain an SDP, unlawfully imposing more restrictive standards on these and likely other ADU applications. As a result, the City’s actions requiring HOA approval on ADUs and denying and disapproving ADU applications to impose discretionary review SDP processes violate State ADU Law.

5. Failure to Provide List of Remedies for Application Completeness

The City’s Ordinance disapproves and denies ADUs created under local ordinance and state exemption by failing to provide an exhaustive list of deficiencies and remedies to cure deficits when determining an application is incomplete pursuant to the PSA and when an application is denied pursuant to State ADU Law.⁷⁴

⁷⁰ Gov. Code, § 66317, subd. (c).

⁷¹ California Housing Defense Fund Letter to the City of Dana Point, February 7, 2023.

⁷² Gov. Code, § 66316.

⁷³ City of Dana Point Resolution 24-09-03, pg. 14.

⁷⁴ Gov. Code, §§ 65943; 66317, subd. (b).

DPMC Section 9.07.210(d)(3) states that the Community Development Director will ministerially approve or disapprove an ADU application within 60 days. However, a local agency is required, within 30 calendar days, to provide an exhaustive list of comments that would remedy the defective elements of the application.⁷⁵ Likewise, if a local agency determines an application is complete, they have 60 days from the time the completed application was *received* to approve or deny the application.⁷⁶ If the local agency denies the application, it must, within the same timeframe, also “return 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.”⁷⁷

Thus, when the City determines an application is incomplete, the City is obligated to return a complete and comprehensive list of remedies, and if it denies or otherwise disapproves the application, also a complete and comprehensive set of written comments to cure the application’s deficits.

Despite these statutory requirements, the City refused to accept the **Silver Lantern** ADU Application, disapproving the application multiple times, including delaying any action on permits until after a new ordinance became effective.⁷⁸ The City claimed it did not deny the application, asserting that it never accepted said application as “complete” because the City refused to accept the application online, requiring the plans to be delivered in person.⁷⁹ Instead, the City offered a “preliminary application review” where it disapproved the application.⁸⁰ The City maintains the application remains unsubmitted despite the City’s building department reviewers indicating multiple reviews of the application occurred.⁸¹ When denying the application for “completeness,” the City failed to give an exhaustive list of items that were not complete and instead indicated there would be a discretionary review, again violating the law. The City’s then mayor became involved, offering “three directions” for the application, none of which complied with the City’s duty to ministerially approve an ADU application.⁸² A housing organization subsequently wrote to the City regarding its unlawful restrictions.⁸³ When HCD offered guidance to the City regarding its actions, the City still refused to accept the application for review.⁸⁴ Such an application, in being disapproved or not accepted as complete, should have received a full set of comments.

⁷⁵ Gov. Code, § 65943, subd. (a).

⁷⁶ Gov. Code, § 66317, subd. (a).

⁷⁷ Gov. Code, § 66317, subd. (b).

⁷⁸ Silver Lantern ADU Application Correspondence; Silver Lantern ADU Application Denial Correspondence, April-May 2022 and July-August 2023.

⁷⁹ Dana Point eProcess 360 Portal correspondence on Silver Lantern ADU Application, April 8, 2022.

⁸⁰ City of Dana Point Correspondence with Silver Lantern ADU application, April 22, 2022.

⁸¹ City of Dana Point Correspondence with Silver Lantern ADU application, December 23, 2022.

⁸² Emails from Mayor of Dana Point, May 26, 2022.

⁸³ Californians for Homeownership letter to the City of Dana Point, July 14, 2022.

⁸⁴ City of Dana Point and HCD Correspondence regarding Silver Lantern ADU Application, August 23, 2023, and February 28, 2024.

In denying the **Sacramento** ADU application, the City failed to provide a full set of comments when offering corrections.⁸⁵ The City required the applicant to go through discretionary review after several rounds of denial/disapproval and after HCD had already offered direction to the City on the matter.⁸⁶ Moreover, the City communicates application requirements frequently by telephone and virtual meetings and requires ADU applications to be submitted at the counter, avoiding accepting or sending comments or corrections in writing as required under the law.⁸⁷ Even though the applicant relented to the City's discretionary SDP process, nearly a year later, the City continues to delay the application by failing to provide clear, complete comments and corrections.⁸⁸

HCD notes that the **San Jose** ADU Application has been similarly denied unlawfully without receiving complete comments or corrections from all permitting agencies.⁸⁹ HCD has been notified of several other applications the City has similarly disapproved and denied by failing its duty to provide the required information as compelled by law when it deems an ADU or JADU application incomplete or denies the application. The City's actions violate the PSA and State ADU Law.

6. Application Timelines – Failure to Process Within Required Timelines

The City fails to determine application completeness within the required timeframe, thus failing to approve or deny ADU and JADU applications within the 60-day timeframe as required by statute. The City also requires discretionary and ministerial permits be obtained prior to a building permit to construct an ADU or JADU. However, the PSA requires local agencies to determine in writing whether the application is complete and then notify the applicant within 30 days of receiving the application, and State ADU Law requires local agencies to approve or deny ADU applications within 60 days of having received a completed application.⁹⁰

The City's Ordinance states, "The Community Development Director shall either deny an application within 60 days *after it is deemed complete* or approve it within the same time period...." (Emphasis added). However, ADU and JADU applications must be approved or denied "within 60 days from the date the permitting agency *receives* a completed application."⁹¹ (Emphasis added.) The timeframe begins once the application is received. If an application is deemed complete on the 30th calendar day after it has been received (pursuant to the PSA), all permitting agencies involved with the review of

⁸⁵ Sacramento ADU Application Denial, February 1, 2023.

⁸⁶ The City denied the applications in June and September of 2023; the applicant ultimately relented to applying for a Site Development Permit, which the City's Planning Commission approved on November 27, 2023.

⁸⁷ Gov. Code, § 65913.3.5, subd. (b).

⁸⁸ Sacramento ADU Application correspondence, October 4, 2024.

⁸⁹ City of Dana Point Denial of San Juan ADU Application, July 26, 2023.

⁹⁰ Gov. Code, §§ 65943, subd. (a); 66317, subd. (a); 66320, subd. (a).

⁹¹ Gov. Code, §§ 66317, subd. (a); 66320, subd. (a).

the application must then conclude their review within 30 days to meet the 60-day requirement. If an application is validly noticed as incomplete, this operates as effectively a denial of the application, and the timeframe starts over.

Furthermore, the City's Application Checklist erroneously states, "The plan check process for [ADUs] is a 60-day period from the date a complete ADU plan check application is *submitted to the Building and Safety Division*."⁹² (Emphasis added). State ADU Law requires **all** permitting agencies, not just the planning department, to approve or deny the application within the same 60 days of the local agency's receipt of a completed application. The City's Application Checklist policy is superseded by State ADU Law and cannot be used to delay or deny ADU and JADU applications.

HCD's review of the City's ADU permitting practices reveal the City has failed to act on ADU applications within the required permitting windows. Both the **Malaga** and **Sacramento** ADU applications were delayed for months while the City determined if their applications were complete and then scheduled and re-scheduled Planning Commission meetings, among other delays or disapprovals.

HCD has informed the City in subsequent findings letters that it must approve or deny ADU applications ministerially according to state law. Nevertheless, the City has failed to amend its ordinance to comply, and instead imposes policies that are contrary to the PSA and State ADU Law.

7. Application Denials – Basing Denials on Inapplicable "Conditions"

The City reviews each application, even those described in Government Code section 66323, for the ADU application's proposed impact on "traffic flow and public safety." However, the City cannot review each application on a case-by-case basis for the impact of the proposed ADU on traffic flow or public safety, as those terms are referred to in Government Code section 66314, subdivision (a) and inapplicable to ministerial approvals of ADU applications.

The City's Ordinance states that it reviews every ADU application "for any other issues related to...the impact of the proposed ADU on traffic flow, or public safety. In the event that the City determines that there is... an impact on traffic flow or public safety... the City may deny the Application."⁹³ The City further attempts to divert ADU applications where it finds "impact" to further discretionary review. Additionally, the phrase "impact...on traffic flow or public safety..." is entirely subjective, and not uniformly verifiable by reference to an external and uniform benchmark or criterion, as required by State ADU Law.⁹⁴

⁹² Dana Point ADU / JADU Plancheck Submittal Requirements.

⁹³ DPMC § 9.07.210 (F)(1)(c).

⁹⁴ Gov. Code, §§ 66313, subd. (h); 66314, subd. (b).

Rather, State ADU Law allows local agencies to “[d]esignate areas within the jurisdiction...where accessory dwelling units may be permitted...based on...the impact of [ADUs] on traffic flow and public safety.”⁹⁵ (Emphasis added.) If the City exercises its discretion to designate specific areas, the City must designate these areas objectively, and by ordinance rather than reviewing applications on a case-by-case basis.

HCD has informed the City in its numerous findings letters that it is precluded from reviewing individual applications for impacts based on “traffic flow and public safety.” Nevertheless, the City has failed to amend its Ordinance accordingly.

8. Application Delay and Denial – Applying Standards beyond State ADU Law

The City offers prospective ADU applicants an ADU/JADU “Plan Check Submittal Requirements,” available online.⁹⁶ The application imposes regulations outside of its ADU Ordinance and additional standards that delay or are used to disapprove and deny ADU and JADU applications.⁹⁷ However, no “local ordinance, policy, or regulation, other than an [ADU] ordinance consistent with State ADU Law” can be the basis of delay or denial of ADU applications.⁹⁸

The City’s Application Checklist states, “Prior to submittal, the property owner(s) must sign an agreement with the City to toll the 60-day approval period for the time from when the applicant has been notified of corrections, to when they officially resubmit corrected plans. Refusal to sign this agreement with the City will result in the automatic denial of the application.”⁹⁹ The City also apparently requires applicants to return corrected plans within two weeks or they are automatically denied. The City requires this waiver in addition to a deed restriction with the submission of an application, both of which are inconsistent with state law. In addition, the City has misinformed applicants that ADUs and JADUs cannot be sold or conveyed separately from the primary unit. HCD has continually urged the City to correct this inconsistency with state law.¹⁰⁰

The City delays and denies ADU and JADU applications based on unlawful regulations it is prohibited from imposing.

⁹⁵ Gov. Code, § 66314, subd. (a).

⁹⁶ Dana Point ADU / JADU Plancheck Submittal Requirements, effective August 9, 2021.

⁹⁷ See Gov. Code, § 66315.

⁹⁸ Gov. Code, § 66317, subd. (c).

⁹⁹ Dana Point ADU / JADU Plancheck Submittal Requirements, pg. 6.

¹⁰⁰ See Gov. Code, § 66341.

9. ADU Preclusion – Non-allowance of Allotted Number of ADUs

The City's Ordinance limits ADUs to one ADU and one JADU per lot zoned for such uses.¹⁰¹ The City also denies attached ADUs and detached ADUs on lots with multifamily dwellings.¹⁰² However, a homeowner on a lot with a proposed or existing single-family dwelling who meets specified requirements is allowed to create one ADU created from existing or proposed space; one detached, new construction ADU; and one JADU.¹⁰³ On lots with proposed or existing multifamily dwellings, a local agency must allow at least one ADU created from non-livable spaces of structures and two detached ADUs.¹⁰⁴ HCD informed the City multiple times that limiting homeowners from creating ADUs authorized under the law is contrary to statute and directed the City to amend its ordinance to allow the total number of units provided for by law.¹⁰⁵

The City claims that there is no law or legislative history that supports HCD's finding.¹⁰⁶ However, the specific statutory provision changed in 2020 with the passing of clean-up legislation.¹⁰⁷ The Legislature changed "or" to "and" in paragraph (1), but they left the "or" in paragraph (1), subparagraph (A). This plain reading allows one ADU converted from existing or proposed space and one JADU per parcel containing an existing or proposed single-family dwelling.

The City also refuses to allow attached and detached ADUs on lots zoned for multifamily dwellings but where the lots do not already contain a multifamily dwelling.¹⁰⁸ Despite HCD's previous technical assistance that the City must allow ADUs on lots zoned for multifamily use, the City refuses to amend its Ordinance in violation of State ADU Law.

¹⁰¹ DPMC § 9.07.210 (E).

¹⁰² DPMC § 9.07.210 (E)(3)(b); 9.07.210(f)(4)(B).

¹⁰³ Gov. Code, § 66323, subd. (a)(1); (a)(2).

¹⁰⁴ Gov. Code, § 66323, subd. (a)(3); (a)(4).

¹⁰⁵ HCD Letter of Findings to Dana Point, January 13, 2023, pg. 2, available at <https://www.hcd.ca.gov/sites/default/files/docs/policy-and-research/ordinance-review-letters/DanaPointADU011323.pdf>; and HCD Letter of Findings to Dana Point, June 28, 2024, pg. 4, available at <https://www.hcd.ca.gov/sites/default/files/docs/policy-and-research/ordinance-review-letters/dana-point-adu-findings-062824.pdf>.

¹⁰⁶ City of Dana Point Resolution 24-09-03, pg. 6.

¹⁰⁷ Assembly Bill 3182 (Chapter 198, Statutes of 2020).

¹⁰⁸ See HCD Letter of Findings to Dana Point, January 13, 2023, pg. 5, available at <https://www.hcd.ca.gov/sites/default/files/docs/policy-and-research/ordinance-review-letters/DanaPointADU011323.pdf>.

10. Imposition of Subjective Standards

The City reviews ADU applications per its local ordinance using subjective criteria, such as requiring ADUs to “maintain *consistency*” with a remodeled primary dwelling, *be similar to* the primary dwelling “with respect to *architectural style*...,” and “*protect* public views...to coastal areas.”¹⁰⁹ (Emphasis added.) However, those are subjective standard, yet all standards used to approve or deny an ADU must be objective.¹¹⁰ HCD directed the City to amend the Ordinance and remove such subjective language, yet the City refuses to do so.

The City claims that “even in connection with ministerial decisions some level of discretion must be exercised. HCD’s position ... is not supported by the plain language contained in the State ADU Laws.” This position contradicts the statute’s clear requirement that all development standards must “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.”¹¹¹ The standards the City imposes must not be discretionary or subjective.

11. Application Denial – Imposition of Incorrect JADU Standards

The City’s Ordinance imposes standards such as impermissible parking requirements, rental terms,¹¹² and life safety and fire regulations it is prohibited from imposing. Moreover, the City does not provide for a JADU that shares sanitation facilities with the primary dwelling.¹¹³ HCD has directed the City to amend its ordinance, yet the City has failed to do so.

For example, the City’s Ordinance specifies that all JADUs must “contain a fire wall sufficient for fire retention.”¹¹⁴ However, JADUs must not be considered under the building and fire code as a new dwelling and the City has no authority to require fire rated walls.¹¹⁵ Additionally, the City may not require parking for a JADU, even parking “required for the primary residence,” when a JADU is converted within the space of a garage, as a garage, for the purposes of permitting a JADU, is part of the primary dwelling.¹¹⁶

The City’s actions impose or fail to establish standards required for JADUs, thereby disapproving, and denying JADUs that are otherwise authorized under State JADU Law.

¹⁰⁹ DPMC § 9.07.210 (F)(8)(f).

¹¹⁰ Gov. Code, § 66314, subd. (b).

¹¹¹ Gov. Code, § 66313, subd. (h).

¹¹² DPMC § 9.07.215 (D)(1), (D)(2).

¹¹³ DPMC § 9.07.215 (D)(4).

¹¹⁴ DPMC § 9.07.215 (D)(4)(f).

¹¹⁵ Gov. Code, § 66337, subd. (a).

¹¹⁶ Gov. Code, § 66333, subd. (d).

12. Prohibition of Existing Structures and Non-Conforming ADUs

The City's Ordinance limits the conversion of accessory structures and buildings on lots with multifamily dwellings or an existing [primary] dwelling to those constructed or occupied prior to January 1, 2020.¹¹⁷ However, state law provides for no such restriction on existing buildings and structures to be eligible for conversion into dwelling units. HCD has twice directed the City to remove this language from the Ordinance as it is not compliant with State ADU Law.

The City claims that HCD is not "authorized to make binding interpretations of the State ADU Laws. Moreover, its interpretation is non sensical...the only reasonable meaning attributable [to existing] is 'existing' as of the time the relevant State ADU Laws were adopted."¹¹⁸ To the contrary, HCD is the administrative agency charged with implementation and enforcement of the statute.¹¹⁹

Moreover, the City's interpretation of "existing" ignores the plain meaning in the statute. State ADU Law consistently distinguishes between "proposed or existing" dwellings.¹²⁰ An applicant may apply to build an ADU or JADU on a lot where no primary dwelling exists but is proposed to exist or on a lot where a primary dwelling already exists. By construing an existing primary dwelling (or accessory structure) to be existing only if occupied or built before 2020, the City is prohibiting the construction of ADUs that are otherwise allowed under State ADU Law.

¹¹⁷ DPMC § 9.07.210 (B)(5), (B)(6), (B)(7).

¹¹⁸ City of Dana Point Resolution 24-09-03, pg. 3.

¹¹⁹ Gov. Code, §§ 65585, subd. (j); 66325.

¹²⁰ See, e.g., Gov. Code, §§ 66313, subd. (a); 66314, subds. (d)(2), (d)(3); 66315; 66321, subd. (b)(3); 66322, subd. (a)(3); 66323, subds. (a)(1), (a)(1)(B), (a)(2); 66333, subds. (d), (e)(1).