

CITY OF DANA POINT**AGENDA REPORT**

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

DATE: NOVEMBER 18, 2025

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JEFF ROSALER, INTERIM COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: SECOND READING AND ADOPTION OF ORDINANCE APPROVING ZONE TEXT AMENDMENT ZTA25-0001 REPEALING CHAPTER 4.40 OF THE DANA POINT MUNICIPAL CODE AND ADDING SECTION 9.07.280 TO TITLE 9 OF THE DANA POINT MUNICIPAL CODE AND SUBMITTAL OF LOCAL COASTAL PROGRAM AMENDMENT LCPA25-0001 TO THE CALIFORNIA COASTAL COMMISSION FOR APPROVAL AND CERTIFICATION

RECOMMENDED ACTION:

That the City Council hold a second reading and adopt an Ordinance entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA ADOPTING ZTA25-0001, REPEALING CHAPTER 4.40 OF THE DANA POINT MUNICIPAL CODE AND ADDING SECTION 9.07.280, ENTITLED "DENSITY BONUS APPLICATION REQUIREMENTS AND PROCESSING" TO TITLE 9 OF THE DANA POINT MUNICIPAL CODE AND SUBMITTING THE ASSOCIATED LOCAL COASTAL PROGRAM AMENDMENT LCPA25-0001 TO THE CALIFORNIA COASTAL COMMISSION FOR APPROVAL AND CERTIFICATION

BACKGROUND:

The State of California enacted Government Code Section 65915 *et seq.*, known as the State Density Bonus Law, to facilitate the development of affordable housing through the provision of density bonuses and related incentives.

The City's existing Density Bonus Ordinance, codified in Chapter 4.40 of the Dana Point Municipal Code, was adopted on October 11, 2006. Since then, the State Density Bonus Law has been amended multiple times, rendering the City's Ordinance outdated and sometimes inconsistent with current State requirements. The proposed Ordinance

clarifies that the City applies the most recent State Law in the review and approval of Density Bonus projects.

The Planning Commission held a public hearing on August 25, 2025, and adopted Resolution PC 25-10-07-02 recommending that the City Council approve the proposed Ordinance.

On Thursday, September 18, 2025, the City Council adopted an Interim Urgency Ordinance repealing Chapter 4.40 and adding Section 9.07.280 to the Dana Point Zoning Code. The Interim Ordinance expired after 45 days. However, on October 7, 2025, a noticed public hearing was held, and the Ordinance was extended.

The Council held a first reading of the proposed permanent Ordinance and adopted Resolution 25-10-07-02, requesting that the Coastal Commission certify the Local Coastal Program Amendment (LCPA) contained in the Ordinance. At the October 21, 2025, Council meeting, staff presented the Ordinance for consideration of a second reading and permanent adoption, noting that the Urgency Ordinance would expire upon its effective date.

Just prior to the Council's second reading, the California Department of Housing and Community Development (HCD) provided comments with requested revisions for the Council's consideration. To allow staff and the Council ample time to review HCD's feedback, the item was continued from October 21st to the November 4th Council meeting.

On November 4, 2025, City Council continued the City's effort to adopt a permanent ordinance to repeal Chapter 4.40 and adds Section 9.07.280 to the Dana Point Zoning Code, thereby updating the Zoning Code to ensure compliance with the State Density Bonus Law. Due to staff's recommendation to include various language clarifications, the ordinance was considered a new "first reading" and introduced as such. Tonight's reading will be the second and final reading.

DISCUSSION:

The California Department of Housing and Community Development (HCD) recently advised the City that its previous Ordinance (Chapter 4.40) was not correctly implementing the State Density Bonus Law. HCD emphasized that the City needs to adopt a specific ordinance for this purpose, which would override and supersede the provisions of the Municipal Code. Failure to do so could place the City at risk of non-compliance with certain requirements of its Housing Element.

In response, the City has been actively working to comply with HCD's request by processing Zone Text Amendment ZTA25-0001 for this purpose. The Planning Commission reviewed ZTA25-0001 at a public hearing on August 25th and adopted a Resolution recommending its adoption by the City Council.

To ensure consistency with State law, staff recommends repealing the outdated density bonus provisions in Chapter 4.40 and establishing a new Chapter 9.07.280 titled “Density Bonus Application Requirements and Processing” (Exhibit A), within Title 9 (Zoning) of the Dana Point Municipal Code. This new chapter would explicitly reference Government Code Sections §§ 65915 et seq., providing a clear framework aligned with current State law.

This approach minimizes the need for frequent municipal code updates due to legislative changes and offers clarity to both applicants and staff by ensuring that the most up-to-date State law governs the review and approval process for density bonus projects.

The first reading of the Ordinance was held on October 7, 2025. On October 21, 2025, HCD requested certain non-substantive revisions to the Zone Text Amendment included in the Ordinance, intended to clarify the language without altering its substantive content. These changes, along with additional clarifying language proposed by staff, have been incorporated into the Ordinance.

Following the second and final reading, if approved, the Council will forward Resolution 25-10-07-02, adopted on October 7, 2025, to the Coastal Commission, requesting certification of a Local Coastal Program Amendment (LCPA) to accompany ZTA25-0001, as it pertains within the Coastal Zone.

NOTIFICATION AND FOLLOW-UP:

Public hearing notices for the October 7, 2025 first reading were published in the Dana Point Times on October 2, 2025, posted at Dana Point City Hall, the Dana Point Post Office, and the Capistrano Beach Post Office, and were mailed to adjacent agencies that the proposed amendments were available for public review.

If approved by City Council, a Local Coastal Plan Amendment will be sent to the California Coastal Commission for approval.

STRATEGIC PLAN IMPLEMENTATION:

Strategic Goal 3: Foster Economic Health and Prosperity

FISCAL IMPACT:

There is no fiscal impact related to the proposed action.

ALTERNATIVE ACTIONS:

Other City Council action, as directed.

ACTION DOCUMENTS:

A. <u>Draft Ordinance</u>	5
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ACTION DOCUMENT A**ORDINANCE NO. 25-XX**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA ADOPTING ZTA25-0001, REPEALING CHAPTER 4.40 OF THE DANA POINT MUNICIPAL CODE AND ADDING SECTION 9.07.280, ENTITLED "DENSITY BONUS APPLICATION REQUIREMENTS AND PROCESSING" TO TITLE 9 OF THE DANA POINT MUNICIPAL CODE AND SUBMITTING THE ASSOCIATED LOCAL COASTAL PROGRAM AMENDMENT LCPA25-0001 TO THE CALIFORNIA COASTAL COMMISSION FOR APPROVAL AND CERTIFICATION

WHEREAS, the State of California enacted Government Code Section 65915 *et seq.*, known as the State Density Bonus Law, to facilitate the development of affordable housing through the provision of density bonuses and related incentives; and

WHEREAS, the City adopted a Density Bonus Ordinance (codified in Chapter 4.40 of the Dana Point Municipal Code) on October 11, 2006; and

WHEREAS, the State Density Bonus Law has been amended numerous times, rendering the City's Ordinance outdated and, at times, inconsistent with State requirements; and

WHEREAS, the State Density Bonus Law has been revised so many times, it has been impractical for the City to attempt to revise its Ordinance quickly enough to keep up with the State's changes, and consequently City staff has been relying on the State Density Bonus Law to evaluate potential density bonus projects rather than the City's Ordinance; and

WHEREAS, the State Department of Housing and Community Development (HCD) has recently advised the City that it did not view it sufficient that the City was applying the State Density Bonus Law, and rather, that it needed to adopt a specific ordinance for that purpose, which would expressly supersede the City's Municipal Code provisions found in Chapter 4.40 of the DPMC; and

WHEREAS, the City has been complying with HCD's request and has been processing Zone Text Amendment ZTA25-0001 for that purpose as follows: the Planning Commission considered it at a public hearing on August 25th, at which time it adopted a Resolution recommending its adoption by the Council.

WHEREAS, on September 18, 2025, the City Council of the City of Dana Point held a public meeting and adopted an Urgency Ordinance as an interim (45 day) measure approving Zone Text Amendment ZTA25-0001 repealing Chapter 4.40 of the Dana Point Municipal Code and adding Section 9.07.280 to Title 9 of the Dana Point Municipal Code, ensuring the City's zoning regulations are consistent with State Density Bonus Law; and

WHEREAS, on October 7, 2025, the City Council of the City of Dana Point held a duly noticed public meeting at which members of the public had the opportunity to review the documents presented to the City Council and provide oral comments to the City Council concerning this Ordinance.

WHEREAS, on October 21, 2025, the City Council of the City of Dana Point held a second duly noticed public meeting at which time the item was continued until November 4th, 2025, due to comments on the Ordinance provided by HCD.

WHEREAS, on November 4, 2025, the City Council of the City of Dana Point held a second duly noticed public meeting at which time the item had substantial changes and will be considered a new first reading with a second reading held on November 18, 2025.

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

SECTION 1: The foregoing recitals are true and correct and incorporated herein as findings of the City Council, as if set forth in full.

SECTION 2: Chapter 4.40 of the Dana Point Municipal Code entitled "Density Bonuses" is hereby repealed in its entirety.

SECTION 3: Section 9.07.280, entitled "Density Bonus Application Requirements and Processing," attached hereto as Exhibit "A," shall be added to Chapter 9.07 of Title 9 of the City's Municipal (Zoning) Code.

SECTION 4: The actions listed above are consistent with the City's General Plan (including but not limited to the City's Housing Element) as well as the Coastal Act and the City's Local Coastal Program.

SECTION 5: This Zone Text Amendment ZTA25-0001 shall constitute Local Coastal Plan Amendment LCPA25-0001 and shall be submitted to the Coastal Commission for certification. In adopting Zone Text Amendment ZTA25-0001, which comprises LCPA25-0001, the City Council makes the following findings:

- A. That the public and affected agencies have had ample opportunity to participate in the LCPA process, **in that proper notice has been provided to the public and affected agencies in accordance with State law, and further in compliance with the LCP Amendment procedures.**

- B. That all policies, objectives, and standards of the LCPA conform to the requirements of the Coastal Act, including that the Land Use Plan as amended is in conformance with and adequate to carry out policies of Chapter Three of the Coastal Act, **in that the amendment does not alter the kind, location, intensity, or density of coastal-dependent or coastal-related uses in a manner inconsistent with the certified Land Use Plan.**
- C. That Coastal Act policies concerning specific coastal resources, hazard areas, coastal access concerns, and land use priorities have been applied to determine the kind, locations, and intensity of land and water uses, **in that the amendment is internally consistent with the certified Land Use Plan and implementing ordinances and does not conflict with any existing policies intended to protect coastal resources.**
- D. That the level and pattern of development proposed is reflected in the Land Use Plan, Zoning Code, and Zoning Map **in that the proposed amendment maintains consistency with the existing land use designations and zoning standards as certified in the Local Coastal Program. The amendment does not introduce new development intensities or land use types that would conflict with the certified Land Use Plan or zoning map.**
- E. That a procedure has been established to ensure adequate notice of interested persons and agencies of impending development proposed after the certification of the LCPA **in that proper notice in accordance with the LCP Amendment procedures has been followed.**
- F. That zoning measures are in place which are in conformance with and adequate to carry out the coastal policies of the Land Use Plan **in that the City's Zoning Code incorporates the provisions of State Density Bonus Law (Government Code §65915 et seq.) by reference, ensuring that qualifying housing developments may access density bonuses, incentives, and waivers in a manner consistent with both state housing mandates and the California Coastal Act. The amendment does not exempt projects from coastal development permit requirements.**
- G. The proposed amendment is consistent with the Dana Point General Plan and Local Coastal Program, **in that Land Use Element Policy 1.1, and 1.2 require the establishment of building intensity and maximum intensities of development for various land use categories.**

SECTION 6: Pursuant to the provisions of the California Environmental Quality Act ("CEQA"), the adoption of this Ordinance does not constitute a "project" as that term is defined in CEQA because it will not cause a direct physical change in the environment,

nor will it cause a reasonably foreseeable indirect physical change in the environment. Separately and additionally, the adoption of this Ordinance is categorically exempt from the CEQA pursuant to Title 14 California Code of Regulations Sections 15061 (b)(3) and 15378, in that it can be seen with certainty that the adoption of the Ordinance does not propose an activity that might have a significant effect on the environment, and further, it will not cause a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Moreover, there are no unusual circumstances that are associated with the adoption of this Ordinance, and thus it is not subject to the unusual circumstances exception set forth in Title 14 California Code of Regulations Section 15300.2. Finally, the preparation and adoption of the Local Coastal Program Amendment is statutorily exempt from the California Environmental Quality Act, pursuant to Section 21080.9 of the Public Resources Code

SECTION 7: The City Clerk shall certify as to the adoption of this Ordinance and cause the same to be published and posted as required by law.

PASSED, APPROVED, AND ADOPTED this ___ day of _____, 2025.

MATTHEW PAGANO, MAYOR

ATTEST:

SHAYNA SHARKE
City Clerk

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

I, SHAYNA SHARKE, City Clerk of the City of Dana Point, California, do hereby certify that the foregoing Ordinance No. 25-XX was duly introduced at a regular meeting of the City Council on the 10th day of October, 2025, and was duly adopted and passed at a regular meeting of the City Council on the XX day of XX, 2025, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

SHAYNA SHARKE, CITY CLERK

EXHIBIT A**§ 9.07.280 DENSITY BONUS APPLICATION REQUIREMENTS AND PROCESSING.**

- a. All density bonus and related incentive, concession, and waiver requests shall comply with and shall be analyzed by the City in accordance with the provisions set forth in State Density Bonus Law (Gov. Code §§ 65915, *et. seq.*) The City of Dana Point shall process all applications for density bonuses and related incentives, concessions, and waivers pursuant to the Permit Streamlining Act (Gov. Code, §§ 65941.1, 65943, & 65950), and the timelines for review provided therein.
- b. Applicants seeking a density bonus or related incentive, concession, waiver, reduction, parking ratio or other right pursuant to the State Density Bonus Law shall submit a written application for the density bonus with the first application for approval of the development proposed to be subject to the density bonus or related incentive, concession, waiver, reduction, parking ratio or other right. Applications shall include the information required for the City to evaluate whether the proposed development is entitled to the requested State Density Bonus Law benefit, and shall include, at a minimum, all of the following:
 1. A site plan showing the total number of market rate and affordable units, the number and location of affordable housing units, and number and location of proposed density bonus units, if any.
 2. If there are existing rental units on the property which the project is proposed, or if rental units existed on the property at any time within the five years preceding the date the application was submitted, a description of the following of how the project complies with Government Code sections 65915(c)(3) and Government Code 66300 related to replacement units, as those sections may be amended.
 3. The level of affordability of housing units and the instrument by which affordability will be guaranteed for the time period required by the State Density Bonus Law.
 4. A management plan for complying with the maintenance of the designated units regarding income qualification documentation and rent or sale price documentation.
 5. A description of any requested incentives, concessions, waivers, reductions, and parking ratios and documentation and support regarding the project's entitlement to those incentives, concessions, or waivers pursuant to the State Density Bonus Law.
 6. The location and description of land to be donated pursuant to the State Density Bonus Law (if any) and documentation and support demonstrating the project's entitlement to a density bonus based on the donation.

7. If the request involves a childcare facility, the location and square footage of the childcare facility and documentation and support demonstrating the project's entitlement to the requested benefit pursuant to the State Density Bonus Law.
 8. An Environmental Review Statement disclosing whether the property is known to have been contaminated in the past or is currently listed on any regulatory database.
 9. If the project site or adjacent properties may contain historic resources, a historic resource assessment shall be submitted to evaluate potential impacts and demonstrate compliance with Government Code Section 65915(d)(1)(3) & (e)(1).
- c. The review of applications for a density bonus or related incentive, concession, waiver, reduction, parking ratio or other right pursuant to the State Density Bonus Law occur concurrently with the review for the entitlement for the project for which the density bonus or related incentive, concession, waiver, reduction, parking ratio or other right is proposed. The approval body for the project entitlement shall also be the approval body for the State Density Bonus Law application. Any appeal procedures applicable to the project entitlement shall also apply to the State Density Bonus Law application.
 - d. Consistent with subdivision (m) of Government Code Section 65915, all State Density Bonus Law applications located within the Coastal Zone shall be subject to the Coastal Act, and any density bonus or related incentive, concession, waiver, reduction, parking ratio or other right to which the applicant is entitled pursuant to the State Density Bonus Law shall be permitted in a manner that is consistent with this section and Division 20 (commencing with Section 30000) of the Public Resources Code.
 - e. Pursuant to State law, the City may deny a requested incentive, concession, or waiver under certain circumstances, including but not limited to those outlined in Government Code Section 65915, subdivisions (d)(1)(B) and (e)(1). Applicants may propose mitigation measures to avoid any specific adverse impacts identified in connection with requests for incentives, concessions, waivers, or reductions in development standards for consideration by the City.