



Sep 1, 2026

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Re: Proposed Amendments to Dana Point's ADU Ordinance

Dear Dana Point City Council,

The California Housing Defense Fund (CalHDF) and Californians for Homeownership submit this letter regarding agenda item 9 for the September 1, 2026 City of Dana Point ("the City") City Council meeting, ZTA26-0002, proposed amendments to the City's Accessory Dwelling Unit (ADU) ordinance.

It is laudable that the City's staff have prepared a proposed zoning text amendment to update the City's ADU ordinance in response to changes in state law. The proposed text amendment is a major improvement over the current ordinance. However, the proposed ADU ordinance violates state law for the reasons listed below.

Background

The law gives local governments authority to enact zoning ordinances that implement a variety of development standards on ADUs. (Gov. Code, § 66314.) The standards in these local ordinances are limited by state law so as not to overly restrict ADU development. (See *id.*) Separately from local ADU ordinances, Government Code section 66323 establishes a narrower set of ADU types that local governments have a ministerial duty to approve. "Notwithstanding Sections 66314 to 66322 ... a local agency shall ministerially approve" these types of ADUs. (*Id.* at subd. (a).) This means that ADUs that satisfy the minimal requirements of section 66323 must be approved regardless of any contrary provisions of the local ADU ordinance. (*Ibid.*) Local governments may not impose their own standards on such ADUs. (Gov. Code, § 66323, subd. (b) ["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 any of paragraphs (1) to (4), inclusive, of subdivision (a).”].)

In addition, ADUs that qualify for the protections of Government Code section 66323, like other ADUs, must be processed by local governments within 60 days of a complete permit application submittal. (Gov. Code, § 66317, subd. (a).)

State law also prohibits creating regulations on ADU development not explicitly allowed by state law. 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 days or longer.”

Clarification of Standards Not Applying to 66323 ADUs

The proposed ordinance correctly singles out the four categories of exemption ADUs for mandatory approval under state ADU law. (Gov. Code, § 66323.) Approval of ADUs covered by this section is not only mandatory, however, the City is also prohibited from applying any additional standards to ADUs. This is why we have referred to them as “Exemption ADUs” since the law’s expansion in 2020.

The proposed ordinance is silent on the following requirements in state law for exemption ADUs:

- Exemption ADUs are not subject to any additional development or design standards not established under state law, including underlying zoning requirements. (Gov. Code, § 66323, subd. (b).)
- All exemption ADUs are not subject to parking requirements, regardless of location. (*Id.*)
- The City is prohibited from requiring the correction of nonconforming zoning conditions on the lot in conjunction with the approval of an exemption ADU. (subd. (c).)
- Lastly, “[t]he installation of fire sprinklers shall not be required in an accessory dwelling unit or a junior accessory dwelling unit if sprinklers are not required for the primary residence. The construction of an accessory dwelling unit or a junior accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing multifamily dwelling.” (subd. (d).)

While it may be that the City intends to adhere to these requirements of state law, homeowners and property owners would benefit from more clarity on the above issues. Further, Section 9.07.212 (D)(4)(b) of the proposed ordinance, applying to both mandatory and non-mandatory ADUs, requires that ADUs comply with “underlying development standards in the zoning district” in which they are located unless those standards are

superseded by state law. For exemption/mandatory ADUs, all other standards are superseded by state law. For non-mandatory ADUs, most if not all underlying standards are superseded. The ordinance would benefit from greater clarity on both of these issues.

Impermissible Imposition of Local Standards on 66323 ADUs

The proposed ordinance has two provisions that impose certain local standards on 66323 ADUs. These provisions may be typos.

Proposed code sections 9.07.212(E)(2)(g) [detached 66323 ADUs on single family lot] and 9.07.212(E)(3)(f) [conversion 66323 ADUs on multifamily parcels] both state “The ADU shall be subject to the development standards set forth in Section 9.07.212(F)(7) below.”

However, Section 9.07.212(F)(7)(b) imposes historical standards and permanent foundation standards. Government Code section 66323, subdivision (b) forbids the application of these local standards to 66323 ADUs.

Because section 9.07.212(F)(7)(b) is entitled, “Additional Requirements of non-mandatory ADUs,” this implies that the City does not intend for Section 9.07.212(F)(7)(b) to apply to 66323 (“mandatory”) ADUs.

Furthermore, proposed code sections 9.07.212(E)(1)(h) [conversion 66323 ADUs on single-family parcels] and 9.07.212(E)(4)(f) [new detached 66323 ADUs on multifamily parcels] both state “The ADU shall be subject to the development standards set forth in Section 9.07.212(F)(7)(a) below.” [emphasis added] Because these two code sections specifically reference Section 9.07.212(F)(7)(a), not Section 9.07.212(F)(7), it seems that the City may not have intended for both Section 9.07.212(F)(7)(a) and (b) to apply to all 66323 ADUs.

Regardless, the City must amend the proposed ordinance to exempt 66323 ADUs from historic standard and permanent foundation requirements.

Duty to Return Written Comments

DPC Section 9.07.212(D)(4) states that the Community Development Director will ministerially approve or disapprove an ADU application within 60 days. However, for disapproved applications, state law requires the City to return a full set of written comments to the applicant that fully describe the deficiencies in the application:

Government Code section 663317, subdivision (b): “If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit pursuant to subdivision (a), the permitting agency shall, within the time period described in subdivision (a), 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.

Impermissible Discretionary Process

DPC Section 9.07.212(H) creates a discretionary site development permit process for ADUs that exceed the standards in the code. However, the City may not require site development permits for ADUs, or allow for such a process, as it is heard by the Planning Commission and constitutes a discretionary approval. Discretionary approvals are forbidden for all ADUs under state law. (Gov. Code, §§ 66316 and 66317.)

The City has invoked Government Code, section 66325, subdivision (b) [“This article does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.”] to justify its discretionary process.

Under standard rules of statutory construction and interpretation, the more specific overruled the more general. (*Lopez v. Sony Elecs., Inc.* (2018) 5 Cal.5th 627.) In this case, the more specific provisions of Government Code, sections 66316 and 66317 [explicitly prohibiting discretionary approval of ADUs] overrule the more general provisions of Government Code, section 66325, subdivision (b), which allow for cities to adopt less restrictive regulations on ADUs than what is found in the statute.

In addition, the City maintains that non-mandatory ADUs are subject to discretionary site development permitting within certain designated areas based on concerns over the availability of on-street parking. While the City is allowed to designate areas of where non-mandatory ADUs are allowed based on adequacy of water and sewer services or the “impact of accessory dwelling units on traffic flow and public safety,” the law does not allow for similar exclusion based on parking concerns. (Gov. Code, § 66314, subd. (a).) While the City’s parking study shows that parking citations are more numerous in these areas, this does not establish any impacts of ADUs on traffic flow or public safety. The City has many options to mitigate overcrowded or dangerous on-street parking conditions through increased enforcement, prohibitions on parking in dangerous areas, or neighborhood residential parking permits. State law does not allow restriction of ADUs based on this rationale.

Duty to Issue Garage Demolition Permit at Same Time as ADU Permit

DPC Section 9.07.212(G) forbids the issuance of ADU and JADU permits if their development triggers another permit required pursuant to the local code, until such a time as the additional permit is granted. However, Government Code section 66316 only allows for ministerial approvals for ADUs and Government Code section 66335, subdivision (a)(1) only allows for ministerial approvals for JADUs. The only circumstance in which it is acceptable for the City to delay action on the ADU or JADU permit is when the permit application is

submitted with a permit application to create a new single or multifamily dwelling on the lot. (Gov. Code, § 66317, subd. (a).)

Furthermore, when a garage is converted into an ADU, the demolition permit for the garage must be issued simultaneously as the ADU permit pursuant to Government Code section 66314, subdivision (e).

The City's Proposed Permit Revocation Procedures are Unlawful

DPC Section 9.07.210(D)(5) allows the City to revoke an ADU permit. DPC Section 9.07.210(D)(5)(a) states "Subject to Government Code section 66331, 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 that are not in conflict with State Law." DPC Section 9.07.215(C)(5) contains similar provisions but applicable only to JADUs. The proposed ordinance goes on to apply notice and cure procedures established for assessing civil violations to the DPMC to permit revocation for ADU permits. Finally the ordinance requires the destruction of the ADU and prohibits separate rental within 60 days if the revocation is finalized.

These procedures establish a separate and draconian enforcement regime for ADUs specifically, applying to no other permitted use allowed under Dana Point's development standards. If applied by their terms, they would inevitably require the destruction of someone's home, and the short notice eviction of whoever is living in the ADU. Invocation of these procedures by the City would be unquestionably illegal.

First, by applying special enforcement procedures to ADUs, including exemption ADUs, the City violates state ADUs laws. These permit revocations standards are not authorized by Gov. Code Section 66314, and are explicitly prohibited by Section 66232, subdivision (b) for exemption ADUs. The City is free to enforce zoning violations through civil penalties and, in extreme cases, misdemeanors (*see* DPC §§ 9.61.030, 9.01.200, 1.01.235, Ch. 1.10.) The City cannot establish a separate enforcement procedure for ADUs requiring immediate permit revocation and destruction of the ADU.

Second, aggressive invocation of the proposed enforcement provisions could result in a government taking of private property without compensation, in violation of the US Constitution. The proposed procedures allow the City to demand, on short notice, the destruction of any ADU for violations of any part of the municipal code. While in some extreme circumstances, local governments can require the discontinuation of vested rights and uses on a property, such uses must be allowed to continue for a period to allow the property owner to achieve a return on his or her investment. (*City of Los Angeles v. Gage* (1954) 127 Cal. App. 2d 442, 459). This amortization period is normally required for discontinuation of nonconforming uses, but here the City is taking the extraordinary step of requiring discontinuation and destruction of a conforming use, for potentially any

municipal code violation. In addition to being unlawful under state ADU law, invoking this enforcement measure would clearly require the City to compensate the property owner for the value of the lost ADU. The City may not revoke an ADU or JADU permit simply for violating **any** parts of its municipal code.

The City May Not Require Converted Parking to be Replaced for ADUs

When an ADU is proposed to be developed by converting existing required off-street parking, whether covered or uncovered, state law prohibits the City from requiring that parking be replaced on the lot. (Gov. Code, § 66314, subd. (d)(11).) While the proposed ordinance does exempt JADUs from any replacement parking (DPC § 9.07.215(D)(4,)) no similar exemption is provided for ADUs.

The City must amend its code to exempt ADUs from replacement parking requirements if their development necessitates conversion of offstreet parking.



As you are well aware, California remains in the throes of a statewide crisis-level housing shortage. ADUs in particular are vital for fulfilling housing need, given that such units are naturally more affordable due to their smaller size and shared land cost. If we do not allow sufficient housing development, more and more Californians will become and remain homeless. CalHDF and Californians for Homeownership urge the Council to amend the City's ADU ordinance to comply with state law.

Sincerely,

A blue ink signature of Matthew Gelfand, written in a cursive style.

Matthew Gelfand
*Californians for
Homeownership*

A blue ink signature of Dylan Casey, written in a cursive style.

Dylan Casey
CalHDF