VIA EMAIL

City Council
City of Dana Point
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RE: June 16, 2020 City Council Meeting, Agenda Item 12.

To the City Council:

Californians for Homeownership is a 501(c)(3) non-profit organization devoted to using legal tools to address California’s housing crisis. I am writing as part of our work monitoring local compliance with California’s laws regarding accessory dwelling units (ADUs).

At your June 16 meeting, you will consider an ordinance intended to address recent changes to state ADU law. If the City adopts a compliant ADU ordinance, it will be able to maintain certain local controls on ADU development. By and large, the City’s draft ordinance is the result of thoughtful development by staff and productive consultation with the state Department of Housing and Community Development (HCD).

But there is one critical area where the draft ordinance directly conflicts with state law and with HCD’s directives. State law requires the City to permit ADUs containing two or more bedrooms to have a floor area of up to 1,000 square feet. Gov. Code Section 65852.2(c)(2)(B) (a locality may not adopt a “maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following: (i) 850 square feet; or (ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.”) (emphasis added). Ignoring the plain language of this subdivision, staff are recommending that you ban two-bedroom ADUs in order to prohibit ADUs over 850 square feet.

It is inconceivable that the Legislature intended to allow cities to exempt themselves from this requirement to allow 1,000 square foot ADUs by banning two-bedroom ADUs.

Even more preposterous is staff’s contention that, somehow, this proposal would be “consistent with the intent of the Legislature in that it would be more likely to create affordable housing opportunities.” It was the Legislature that opted to require cities to allow 1,000 square foot, two-bedroom ADUs. To rewrite state law based on the City’s policy preferences, in the guise of making the law more “consistent with the intent of the Legislature,” is absurd.
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In any event, the purpose of the ADU laws is not to create artificially small housing units because smaller housing units have lower rents. The purpose is to create new housing units, with minimal impacts, at low cost, to decrease the overall market rate cost of housing. See Gov. Code § 65852.150. Housing in California is expensive because there is not enough of it, not because the units are too big.

Nor is a one-bedroom limit “consistent with existing residential development in Dana Point.” The modal housing unit in the City has three bedrooms, and over 85% of units in the City have two or more bedrooms.¹

As drafted, the City’s ADU ordinance will be null and void, in its entirety, and staff will be legally required to apply permissive state law standards for ADUs until the City adopts a compliant ordinance. We also anticipate that the related Local Coastal Program amendment will be rejected by the Coastal Commission, which is aggressively enforcing the state’s ADU laws consistent with HCD’s interpretations. We urge you to amend the ordinance to allow for two-bedroom, 1,000 square foot ADUs.

Sincerely,

Matthew Gelfand

cc: City of Dana Point
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¹ 2018 American Community Survey 5-Year Estimate.