

**CITY OF DANA POINT  
PLANNING COMMISSION  
AGENDA REPORT**

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**DATE:** MAY 27, 2020

**TO:** DANA POINT PLANNING COMMISSION

**FROM:** COMMUNITY DEVELOPMENT DEPARTMENT  
BRENDA WISNESKI, DIRECTOR  
SEAN NICHOLAS, SENIOR PLANNER

**SUBJECT:** LOCAL COASTAL PROGRAM AMENDMENT LCPA19-0002/ZONE TEXT  
AMENDMENT ZTA19-0002, RELATED TO ACCESSORY DWELLING  
UNITS, JOINT PARKING AND PUBLIC NOTIFICATION

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**RECOMMENDATION:** That the Planning Commission adopt the attached draft resolution recommending the City Council approve Local Coastal Program Amendment LCPA19-0002/Zone Text Amendment ZTA19-0002 (Action Document 1).

**APPLICANT:** City of Dana Point

**REQUEST:** A request for modifications to the Dana Point Zoning Code including the local Accessory Dwelling Unit requirements consistent with State Law.

**LOCATION:** Citywide

**NOTICE:** A 1/8<sup>th</sup> page notice was published in the Dana Point News on May 15, 2020, and notices were posted on May 15, 2020 at Dana Point City Hall, the Dana Point post office, and the Capistrano Beach post office. The same notice was sent to the Coastal Commission.

The required LCPA notification of the 6 week review notices were posted on the City Website and mailed to the Coastal Commission, adjacent jurisdictions, SCWD, and State Parks and Recreation.

**ENVIRONMENTAL:** Pursuant to the California Environmental Quality Act (CEQA) staff has determined that the project is exempt from CEQA pursuant

to Section 15265 as CEQA does not apply to a local government's preparation of a local coastal program amendment.

**ISSUES:**

1. Is the proposal consistent with the City's adopted General Plan?
2. Is the proposal consistent with the California Coastal Act?
3. Is the proposal consistent with the Local Coastal Program Amendment procedures as set forth in the Dana Point Zoning Ordinance, Section 9.61.080?

**BACKGROUND:**

On April 13, 2020, the Planning Commission conducted a public hearing and considered three amendment topics: 1) joint use of parking requirements, 2) public notification requirements, and 3) accessory dwelling units/junior accessory dwelling units. Following discussion, Planning Commission recommended 5-0 approval of the amendments to City Council.

Following the public hearing, staff received comments from the California Housing and Community Development (HCD) Department regarding Dana Point's draft ADU/JADU Ordinance, and HCD's interpretation of State law. While a majority of comments were minor, HCD provided some recommendations on items that were discussed in detail by the Planning Commission at its prior public hearing. As a result, staff determined it would be appropriate to bring the LCPA/ZTA back for Planning Commission re-consideration. HCD's comments have been incorporated into the draft language within the attached Resolution (Action Document 1). Supporting Document 2 is a redline version of the changes as a result of HCD's comments.

No other components of the LCPA/ZTA have been modified.

**DISCUSSION:**

Amendments to the DPZC and LCP are legislative actions and therefore the role of the Planning Commission is to make a recommendation to City Council.

**Joint Use of Parking Facilities and Public Notifications Modifications**

As noted above, there are no proposed modifications to what was previously reviewed by the Planning Commission. Supporting Document 3 is the Planning Commission staff report (excerpted), and provides information on these proposed amendments.

*Accessory Dwelling Units/Junior Accessory Dwelling Units*

Following the Planning Commission review on April 13, 2020, staff sent the draft ADU/JADU Ordinance to HCD to get preliminary feedback. Overall, HCD was supportive of the draft Ordinance. However, HCD proposed several recommendations on items that were previously discussed by the Planning Commission in detail at its public hearing. As a result, Staff felt it would be appropriate to bring the draft Ordinance back to Planning Commission for additional discussion and consideration. The following is a summary of HCD's recommended changes.

*Height and Story Limitations*

HCD staff was supportive of the draft language regarding the location and height of ADUs that met the underlying zoning district setbacks. However, HCD requested removing the one-story limitation and to make it clear that any ADU, at minimum, can be 16 feet in height. As a result, the one-story limitation has been eliminated from the attached draft Ordinance.

*Bedroom and Unit Size Limitations*

HCD requested that the limitation on the number of bedrooms be removed due to their concerns related to Fair Housing laws. While staff did not agree with HCD's analysis, it was clear that they would not support the City's Ordinance without removal of those provisions.

Similarly, HCD had concerns on Dana Point's unit size limitation of 850 square feet. Consistent with State law, the City's original draft Ordinance allowed attached ADUs to be a maximum of 50% of the primary structure, with 850 square feet being the limit. HCD recommended simplifying and only allowing a maximum of 1,000 square feet regardless of detached or attached, and remove the attached ADU 50% development standard. HCD indicated that they have supported this approach in other jurisdictions, and recommended Dana Point take the same approach. As a result, the attached draft Ordinance was revised to eliminate the bedroom limitation and limit all ADUs to a maximum size of 1,000 square feet.

*Kitchen and Cooking Facilities*

HCD requested "provisions for cooking" be a broad term, subject to the requirements of the California Building/Residential Code. As a result, the following language has been included for both ADUs and JADUs:

*"All ADUs/JADUs shall contain the necessary interior amenities, including "provisions for cooking" which at minimum includes electrical outlets to plug in a hot plate, microwave, etc., subject to California Building Code requirements."*


HCD's recommends referring to State law whenever possible instead of local Zoning Code

requirements. As a result, Government Code Section 65852.2 is referenced multiple times, instead of the City's Municipal/Zoning Code.

After receiving input from the Planning Commission on HCD's recommended revisions, Staff will present a draft ADU Ordinance to the City Council for its review, consideration, and adoption.

**CONCLUSION:**

Staff recommends the Planning Commission consider public testimony and approve the resolution recommending the City Council adopt the LCPA and ZTA.

  
\_\_\_\_\_  
Sean Nicholas, AICP  
Senior Planner

  
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Brenda Wisneski, AICP  
Director of Community Development

**ACTION DOCUMENT:**

1. Draft Planning Commission Resolution No. 20-05-27-XX

**SUPPORTING DOCUMENTS:**

2. Redline version of changes recommended by HCD
3. April 13, 2020 Planning Commission staff report (excerpted)



**Action Document 1:          Draft Planning Commission Resolution No. 20-05-27-XX**

**RESOLUTION NO. 20-05-27-XX**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF DANA POINT, CALIFORNIA, RECOMMENDING CITY COUNCIL APPROVAL OF LOCAL COASTAL PROGRAM AMENDMENT LCPA19-0002/ZONE TEXT AMENDMENT ZTA19-0002 TO MODIFY THE ZONING CODE RELATED TO ACCESSORY DWELLING UNITS, JOINT PARKING PROVISIONS, AND PUBLIC NOTIFICATION.**

**Applicant:** City of Dana Point

The Planning Commission of the City of Dana Point does hereby resolve as follows:

WHEREAS, in 1993, the City of Dana Point approved, and the California Coastal Commission certified, the Zoning Ordinance of the City of Dana Point; and

WHEREAS, the City seeks to update the Zoning Ordinance by amending or adding various sections regarding joint use of parking requirements, notifications of public hearing, accessory dwelling units, and junior accessory dwelling unit; and

WHEREAS, the proposal is for a Local Coastal Plan Amendment (the "LCPA") and Zone Text Amendment (the "ZTA") to update by amending various provisions of the Zoning Code; and

WHEREAS, the ZTA and LCPA will be consistent with and will provide for the orderly, systematic and specific implementation of the General Plan; and

WHEREAS, on February 20, 2020, the proposed ZTA and LCPA were made available for public review at City Hall and Library locations within the City of Dana Point, provided to the Coastal Commission Long Beach office, and available on the City of Dana Point's website; and

WHEREAS, on March 9, 2020, the Planning Commission conducted a workshop to discuss and provide direction related to the subject LCPA and ZTA; and

WHEREAS, the Planning Commission held a duly noticed public hearing as prescribed by law on April 13, 2020, to consider said LCPA and ZTA and recommended approval; and

WHEREAS, after the Planning Commission recommendation, the California Housing and Community Development (HCD) Department provided comments for greater compliance with state law, and as a result staff is bringing

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the proposed modified language back to Planning Commission for re-consideration; and

WHEREAS, the Planning Commission held a duly noticed public hearing as prescribed by law on May 27, 2020, to consider said LCPA and ZTA; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, the Planning Commission considered all factors relating to LCPA19-0002 and ZTA19-0002.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Dana Point as follows:

- A. That the above recitations are true and correct and incorporated herein by reference;
- B. The revisions to the Zoning Ordinance are attached hereto as Exhibit "A" showing all proposed changes in a strikethrough/underline format, and Exhibit "B" showing a "clean" copy of the proposed modifications and incorporated herein by reference;
- C. That the proposed action complies with all other applicable requirements of State law and local Ordinances;
- D. That LCPA19-0002/ZTA19-0002, are in the public interest;
- E. As part of the preparation and adoption of the LCPA and ZTA staff completed an environmental analysis consistent with the California Environmental Quality Act (CEQA) and determined that the project is exempt from CEQA per Section 15265 as CEQA does not apply to a local government's preparation of a Local Coastal Program Amendment;
- F. The proposed amendments to the Zoning Code will be consistent with the General Plan;
- G. The Planning Commission recommends that the City Council adopt LCPA19-0002 and ZTA19-0002 for the reasons outlined herein;
- H. That the Planning Commission adopt the following findings:
  - 1. That the public and affected agencies have had ample opportunity to participate in the LCPA and ZTA process, **in that proper notice in accordance with the LCPA procedures of the Dana Point Zoning Code (DPZC) has been followed. Notices were; 1) mailed on February 20,**

2020, to notify adjacent agencies that the proposed changes were available for public review, hard copies were made available at City Hall and the Dana Point Library, and was put on the City's website 2) published in the Dana Point Times on April 3, 2020 for the Planning Commission Public Hearing, and 3) posted at the Dana Point City Hall, the Dana Point Post Office, the Capistrano Beach Post Office, the Dana Point Library, and on the City's website on April 3, 2020.

2. That all policies, objectives, and standards of the LCPA and ZTA 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 amendments to the Zoning Code are consistent with the Coastal Act policies in that none of the modifications proposed will have impacts to coastal resources or access to coastal resources, and creating requirements to allow for more joint use of parking will promote the establishment of more visitor/resident serving amenities in locations like Town Center, Doheny Village, and Dana Point Harbor. The changes to the Public Hearing process will allow for greater notification of new development in the City of Dana Point, and the updates associated with accessory dwelling units and junior accessory dwelling units are consistent with state law and provide additional affordable housing in coastal areas.**
3. That Coastal Act policies concerning specific coastal resources, hazard areas, coastal access concerns, and land use priorities have been applied to determine the kind of locations and intensity of land and water uses, **in that the Local Coastal Plan Amendments and Zone Text Amendments do not impact any land use provisions associated with coastal resources, hazard areas, coastal access concerns, and land use priorities contained in the certified Local Coastal Plan and thereby continues to be consistent with Coastal Act policies.**
4. That the level and pattern of development proposed is reflected in the Land Use Plan, Zoning Code, and Zoning Map, **in that the level and pattern of development as approved in these documents will remain, and the goal is to better utilize joint use of parking facilities provisions in the Zoning Code, provide increased public notification of public hearings, and update local**

**accessory dwelling/junior accessory dwelling unit requirements consistent with State law.**

5. That a procedure has been established to ensure adequate notice of interested persons and agencies of impending development proposed after the certification of the ZTA and LCPA, **in that procedures and regulations in Chapter 9.61 "Administration of Zoning", constitute minimum standards for LCPAs and ZTAs within the City's Coastal Zone and applicable notification and process requirements would be applied to subsequent development requests as applicable if these amendments are approved.**
6. 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 these amendments will promote use of the existing joint use of parking facilities provisions of the Zoning Code to promote new visitor/resident serving uses throughout the community. The update to accessory dwelling unit/junior accessory dwelling unit requirements is consistent with State law and will provide more affordable units within the coastal zone, making coastal resources more accessible.**
7. The proposed amendment is consistent with the Dana Point General Plan and Local Coastal Program, **in that Land Use Element Policy 1.1, 1.2, 1.3, and 1.6 requires development standards to be developed to address a wide range of development needs and uses for the community. The modifications proposed will increase utilization of joint use of parking facilities and increase public notification of public hearings. Additionally, the updates include new accessory dwelling unit/junior accessory dwelling unit provision consistent with new State law.**
8. The proposed amendment complies with all other applicable requirements of state law and local ordinances, **in that the Amendments have has been reviewed by staff to ensure there would be no impact or internal inconsistencies with any other local ordinances.**
- I. That the Planning Commission recommends that the City Council include the following findings in the City Council resolution submitting the LCPA and ZTA to the Coastal Commission:

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1. The City certifies that with the adoption of these amendments, the City will carry out the Local Coastal Program in a manner fully in conformity with Division 20 of the Public Resources Code as amended, the California Coastal Act of 1976.
  2. The City include the proposed LCPA and ZTA for the Zoning Code modifications in its submittal to the Coastal Commission and state that the amendment is to both the land use plan and to the implementing actions.
  3. The City certifies that the land use plan is in conformity with and adequate to carry out the Chapter Three policies of the Coastal Act.
  4. The City certifies that the implementing actions, as amended, are in conformity with and adequate to carry out the provisions of the certified Land Use Plan.
  5. The Ordinance of the City Council includes the LCPA and ZTA numbers LCPA19-0002 and ZTA19-0002 when submitted to the Coastal Commission.
  6. The City finds that the Ordinance is exempt from CEQA pursuant to Section 15265 of the CEQA Guidelines.
  7. The City certifies that the amendments will be submitted to the Coastal Commission for review and approval as an Amendment to the Local Coastal Program.
- J. That the Planning Commission recommends that the City Council adopt ZTA19-0002, which would amend the Dana Point Local Coastal Program pursuant to LCPA19-0002, as shown in the attached Exhibit "A" and Exhibit "B". The Planning Commission recommends the amendment for the reasons outlined herein and in the Planning Commission Agenda Report, including but not limited to: updating the Zoning Ordinance as regular maintenance ensures policy and requirements are relevant, accurate, and compliant to State law.
- K. ZTA19-0002 constitutes the LCPA19-0002 for the City of Dana Point.

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PASSED, APPROVED, AND ADOPTED at a regular meeting of the Planning Commission of the City of Dana Point, California, held on this 27<sup>th</sup> day of May, 2020, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Mary Opel, Chair  
Planning Commission

ATTEST:

\_\_\_\_\_  
Brenda Wisneski, Director  
Community Development Department

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EXHIBIT "A"

**KEY:**

Normal Text=Existing unmodified language

**~~Strikethrough Text~~**=Proposed language to be removed

**Underline Text**=Proposed language to be added

9.07.210 ~~Second Dwelling Units or Granny Flats.~~

(a) ~~Purpose and Intent. This Section provides standards and procedures for the development of second dwelling units. These standards are established so that second dwelling units may be evaluated under conditions that will assure their compatibility and enhancement to the site and surrounding land uses, and provide a safe, desirable and affordable living environment.~~

(b) ~~Development Standards. Where a single family dwelling unit exists on a lot zoned for such purposes, the property owner may establish a second dwelling unit from the same lot, provided it be occupied by an individual adult or two senior adults and may be attached to or detached from the primary single family unit, but may not be sold as a separate dwelling unit. The following standards shall be met and shall not be modified or varied from:~~

(1) ~~The second dwelling unit shall not exceed thirty (30) percent of the living area of the primary residence when attached or one thousand two hundred (1,200) square feet when detached;~~

(2) ~~Second dwelling units whether attached or detached shall not encroach into any setback area required for the primary structure;~~

(3) ~~An additional parking stall, in accordance with the standards described in Chapter 9.35, shall be provided for the second dwelling unit;~~

(4) ~~The second dwelling unit shall be compatible in height, setback and architectural design with the primary structure and the surrounding land uses;~~

(5) ~~Second dwelling units must be affordable to persons of low and moderate income, and remain affordable for the life of the project. The life of the project shall be determined as the length of time the second dwelling unit is occupied; and~~

(6) ~~Each second dwelling unit shall have adequate storage and private open space.~~

(c) ~~Coastal Development Permit. If the second unit requires a Coastal Development Permit it shall be processed in accordance~~

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~~with Chapter 9.69, with the exception of the required public hearing. Per Government Code Section 65852.2, cities may not use a discretionary process for approving a second unit. The Coastal Development Permit will be processed ministerially. Public noticing and a Notice of Final Action will be filed in accordance with the Coastal Development Permit process.~~

~~(d) The ministerial decision to approve or deny a request for a second unit may be appealed to the Planning Commission in accordance with Section 9.61.110.~~

#### 9.07.210 Accessory Dwelling Units

(a) Pursuant to the provisions of California Government Code Section 65852.2, or any successor statute, the following shall provide development standards to ensure the orderly development of accessory dwelling units (ADU) in the City. Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resource Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

(b) Improvements (including, but not limited to garages, retaining walls, etc.) that are not necessary for the physical construction of an accessory dwelling unit may be subject to a discretionary permit and/or public hearing, if required by Title 9 of the Municipal Code.

(c) Development Standards. The development standards set forth below shall apply to all ADUs. In addition, for any development standard not explicitly identified below, the requirements of the underlying zoning district may apply, unless superseded by State Law.

- (1) Zoning. Accessory dwelling units shall be allowed in all zoning districts that allow single-family and multi-family residential development.
- (2) Sale and Rental of Units. The accessory dwelling unit shall not be sold separately from the primary dwelling unit and shall not be rented for less than thirty (30) days.
- (3) Deed Restriction. A Deed Restriction prepared by the City shall be recorded on the subject lot prior to issuance of building permits stating that the ADU is subject to the requirements of this Section, shall not be sold separately



from the primary dwelling unit, and shall not be rented for less than 30 days.

**(4) Number of Units Allowed.**

**(A) Single Family Residential Zoning Districts.** In single family residential zoning districts, an applicant shall be allowed to construct one (1) detached or attached ADU per lot. Pursuant to Government Code 65852.2, in addition to the one (1) attached or detached ADU allowed in this Section, an applicant may also construct one (1) junior accessory dwelling unit so long as it complies with the requirements of California Government Code Section 65852.22.

**(B) Multi-Family Zoning Districts.** In multi-family zoning districts, an applicant shall be allowed to construct at least one (1) ADU per existing multi-family structure. In addition, an applicant may be allowed to construct a number of ADUs that is equivalent to up to twenty-five percent (25%) of the existing units of the existing multi-family structure if City Staff determines that all building code standards can be met and the applicant acquires a city-approved building permit. Notwithstanding the foregoing, no more than two (2) detached ADUs may be constructed on a parcel with an existing multi-family structure.

**(5) Setbacks/Height Limitation.** Attached or detached ADUs shall have four (4) foot side and rear yard setback. No portion of an attached or detached ADU shall project into the required front yard setback of the underlying zoning district unless allowed by California Government Code Sections 65852.2(c)(2)(C) or 65852.2(e)(1)(B)(D).

**(A) All detached ADUs shall be allowed to be a maximum of sixteen (16) feet in height. Notwithstanding the foregoing, if the detached ADU is constructed above an existing or proposed detached garage, then it may exceed 16 feet but must be constructed in a manner that is consistent with the height limitation and setback requirements of the underlying zoning district.**

**(B) If an ADU is attached to an existing or proposed primary dwelling or garage and meets all applicable setbacks of the underlying zoning district, then the ADU may be developed consistent with the maximum**

height limitation set forth in the underlying zoning district, pursuant to all of the provisions of this Section, and the provisions of Section 9.05.110.

(C) ADUs shall only be permitted to be constructed above an attached or detached garage if the underlying zoning district allows for such construction and the existing or proposed primary dwelling is two stories.

- (6) Building Separation. An attached or detached ADU shall be subject to the building separation requirements of the underlying zoning district, unless compliance with the separation requirement would result in an ADU that is not at least 800 square feet in size.
- (7) Legally existing detached accessory structures which do not meet the minimum setbacks requirements of Subsection (6), may be converted to an ADU, subject to the approval of a building permit and Fire Safety/Building Code (California Government Code 65852.2(e)(1)(A)).
- (8) Unit Size. The maximum size of an attached or detached ADU shall be limited to 1,000 square feet (California Government Code Section 65852.2(c)(2)(C)).
- (9) Architectural compatibility. Any attached or detached ADU must maintain the general character of a single-family neighborhood as determined by the Community Development Director as part of the ministerial approval process. Architectural design shall be consistent with the primary residential dwelling unit.
- (10) Historic Resources. An ADU shall not negatively impact a Historic Resource that is listed on or eligible for listing on a local, state, or national registry or inventory pursuant to California Government Code Section 65852.2(a)(1)(B).
- (11) Parking. No additional parking shall be required for an ADU, other than that which is required for the primary residence. If an existing garage is converted to an ADU, replacement parking cannot be required pursuant to California Government Code Section 65852.2.

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- (12) Access. All ADUs are required to have separate exterior access from the primary residence.
- (13) Fire Sprinklers. Fire sprinklers shall not be required for any attached or detached ADU, unless required for the primary residence due to the construction of a new ADU pursuant to California Government Code 65852.2(e)(1)(A).
- (14) Flood Plain Zone. For lots located within the identified Floodplain Overlay District, all ADUs shall meet the requirements specified in Dana Point Zoning Code Chapter 9.31.
- (15) Other Provisions.
  - (A) All ADUs shall contain the necessary interior amenities, including "provisions for cooking" which at minimum includes electrical outlets to plug in a hot plate, microwave, etc., subject to California Building Code requirements.
  - (B) All ADUs must meet the requirements of the California Building/Residential Code, as adopted and amended by Title 8 of the City of Dana Point Municipal Code.
  - (d) Affordability Incentives. To promote the development of very-low and low-income residential units and to meet the City's Regional Housing Needs Assessment (RHNA) goals, the City may approve the use of economic incentives, including but not limited to reduced or waived plan check fees and/or the allowance of ADUs in additional zoning districts where there is an associated, legal residential use. If the subject incentives are utilized, a deed restriction shall be required to be recorded prior to building permit issuance stating that, the ADU shall be occupied by very-low to low-income households for a 55 year period. An annual report shall be submitted to the City of Dana Point Community Development Department to verify compliance with the income restriction requirements. If more than one incentive is utilized, the occupant(s) shall qualify as a very low household.

#### 9.07.215 Junior Accessory Dwelling Units

- (a) Pursuant to the provisions of California Government Code Section 65852.22, or any successor statute, the following shall provide development standards to ensure the orderly development of junior accessory dwelling units (JADU) in the City. Nothing in this section shall be construed to supersede or in any way alter or lessen the

effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resource Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

(b) Development Standards. The development standards set forth in subsection (c) shall apply to all JADUs.

(c) Local Requirements for all Junior Accessory Dwelling Units.

(1) Sale, Rental and Occupation of Units. The JADU shall not be sold separately from the primary dwelling unit and shall not be rented for less than thirty (30) days. In addition, either the JADU or the primary dwelling in which the JADU is located shall be occupied by the property owner at all times, unless the property is owned by a government agency, land trust or housing organization.

(2) Deed Restriction. A Deed Restriction prepared by the City shall be recorded on the subject property prior to issuance of building permits stating that the JADU is subject to the requirements of this Section, shall not sold separately from the primary dwelling unit, shall not be rented for less than 30 days, and that either the JADU or the primary dwelling in which the JADU is located shall be occupied by the property owner at all times.

(3) Number of Units Allowed.

(A) Single Family Residential Zoning Districts. In single family residential zoning districts, an applicant shall be allowed to construct one (1) JADU within the walls of an existing or proposed primary residence. Pursuant to Government Code 65852.2, in addition to the one (1) junior accessory dwelling unit allowed in this Section, an applicant may also construct one (1) attached or detached ADU allowed so long as it complies with the requirements of Section 9.07.215.

(B) Multi-Family Zoning Districts. A JADU may be created within a legal multi-family residential unit. All JADUs shall require building permits and must meet building code standards.

(4) Unit Size and Construction.

(A) A JADU shall not exceed 500 square feet.

- (B) A JADU must be contained within the walls of an existing or proposed primary dwelling, except an application for a JADU may include an addition if necessary to accommodate ingress and egress. A JADU may be located on the second floor of an existing or proposed primary dwelling.
- (C) All JADUs shall contain the necessary interior amenities, including “provisions for cooking” which at minimum includes electrical outlets to plug in a hot plate, microwave, etc., subject to California Building Code requirements.
- (5) JADUs may share sanitation facilities with the primary residence.
- (6) Exterior access must be provided for all JADUs separate from the main entrance to the primary residence.
- (7) Any new construction which provides exterior access shall be architecturally consistent with the existing primary residential unit and approved ministerially.
- (8) All JADUs must meet the requirements of the California Building Code, as adopted and amended by Title 8 of the City of Dana Point Municipal Code.
- (9) Fire sprinklers shall be required for a JADU, if they are required for the primary residence.
- (10) Flood Plain Zone. All JADUs constructed within the Floodplain Overlay District shall meet the requirements set forth in Chapter 9.31.
- (d) Affordability Incentives. To promote the development of very-low and low-income residential units and to meet the City’s Regional Housing Needs Assessment (RHNA) goals, the City may approve the use of economic incentives, including but not limited to reduced or waived plan check fees and/or the allowance of ADUs in additional zoning districts where there is an associated, legal residential use. If the subject incentives are utilized, a deed restriction shall be required to be recorded prior to building permit issuance stating that, if rented, the JADU shall be occupied by very-low to low-income households for a 55 year period. An annual report shall be

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submitted to the City of Dana Point Community Development Department to verify compliance with the income restriction requirements. If more than one incentive is utilized, the occupant(s) shall qualify as a very low household.

**Chapter 9.35 Access, Parking and Loading**  
**9.35.060 Parking Requirements**

(c)(3) Joint Use of Parking Facilities. Multiple uses on multiple building sites may establish joint use parking facilities within one or more parking areas located within such multiple building sites, provided the following requirements are met:

(A) A detailed joint use parking plan shall be approved by a Minor Site Development Permit issued by the Director of Community Development pursuant to Chapter 9.71. The plan shall show and explain all parking facilities, uses and structures that will use the parking and the pedestrian access from the parking facilities to the uses and structures.

(B) The boundary of the parking facilities shall be within ~~three hundred (300) feet~~ ¼ mile of the uses they serve and connected to the site by an ~~attractive and~~ adequate pedestrian path or sidewalk to the satisfaction of the Director of Community Development.

(C) Adequate assurance, to the satisfaction of the Director of Community Development, shall be provided to guarantee that required parking will continue to be maintained in compliance with applicable provisions of this Chapter. This assurance shall be recorded in the office of the Orange County Recorder on all properties utilizing the joint use parking facilities.

**9.61.050 Notice and Conduct of Public Hearings.**

(a) Notice of Hearings for Review of Applications. No less than ~~ten (10)~~ fourteen (14) calendar days prior to the date of a public hearing on development applications, the Director of Community Development shall give notice including the time and the place at which the application will be heard, the identity of the hearing body or officer, nature of the application (including but not limited to the date of filing of the application, the name of the applicant, the file number assigned to the application, and a description of the development), a brief description of the general procedure of the City of Dana Point concerning the conduct of hearing and local actions, and the general location of the property under consideration. If the application is for a coastal development permit which is appealable to the Coastal Commission, the notice shall indicate this fact and shall describe the process for local and Coastal Commission appeals, including any local fees required. (14 Cal. Code of

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Regulations/13565, 13568). The Director shall observe the following notice requirements:

- (1) The notice shall be posted in three (3) places in the City of Dana Point designated by Resolution of the City Council.
- (2) The notice shall be advertised in a newspaper circulated within the City of Dana Point.
- (3) The notice shall be mailed via first class mail to the applicant(s); to the property owner(s) or the property owner's agent(s); to all persons listed as owners of property within five hundred (500) feet of the exterior boundary of the subject property on the notification list required in Section 9.61.040, and if the subject property is located in the Coastal Zone, to the office of the Coastal Commission having jurisdiction over the City of Dana Point and to all persons listed as occupants of dwelling units within one hundred (100) feet of the exterior boundary of the subject property on the notification list required in Section 9.61.040.

Notice shall also be provided to anyone filing a written request and paying the cost for notification and to such other persons whose property might, in the Director's judgment, be affected by the proposed application. For coastal development permit applications, the Director shall also provide notice by first class mail free of charge to all persons who have requested to be on the mailing list for that development project or the mailing list for all coastal decisions within the City of Dana Point.

**(4) For all non-residential projects requiring a public hearing, at least fourteen (14) calendar days prior to the date of public hearing, the applicant shall post at the project site three (3) notices of public hearing in conspicuous places, with at least two (2) of the notices located adjacent and facing the public right-of-way so that they may be visible to both pedestrians and vehicular traffic. The required public notices will be provided by the Planning Division to the applicant, and the applicant shall provide visual evidence and a signed affidavit of posting.**

**(4)(5)** If the Director finds that the posting and mailing of notices prescribed in this Section may not give sufficient notice to the affected property owners, then additional notices may be posted at locations which are best suited to reach the attention of, and properly inform those persons who may be affected.

**(5)(6)** When the proposed entitlement affects more than 1,000 (one thousand) property owners, the required notice may be provided by placing a 1/8 page display advertisement in a newspaper circulated within the City of Dana Point. Such notice shall be considered an acceptable substitute for the published

notice required in subsection (2) and the mailed notice required in subsection (3). However, in the case of coastal development permit applications, newspaper notice shall not substitute for the mailed notice required in subsection (3) above.

~~(6)~~(7) The notice shall be sent to public officers, departments, bureaus, or agencies which, in the determination of the Director of Community Development, could be affected by the application or otherwise require noticing.

~~(7)~~(8) When a Negative Declaration is recommended for adoption pursuant to the California Environmental Quality Act (CEQA), notice of intent to adopt a Negative Declaration shall be published no less than twenty-one (21) days prior to the hearing date, or thirty (30) days prior to the hearing date for applications which require circulation of the Negative Declaration to the State Clearinghouse.

~~(8)~~(9) Notice for Timeshare Properties.

(A) If a timeshare property falls within the one hundred (100) foot occupant-notification radius for Coastal Development Permits described in (8) above, all shareholders shall be notified as described in subsection (3) above.

(B) If a timeshare property falls outside the one hundred (100) foot occupant-notification radius described in subsection (8) above, but within the five hundred (500) foot property owner-notification radius described in subsection (3) above, notices shall be sent to the property manager/sales agent for the timeshare, the shareholders association for the timeshare where one exists, and one notice to each physical unit in the timeshare, addressed to "Occupant."

(b) Notice for General Plan Amendments. Prior to any amendment to the General Plan, the Community Development Department shall forward the proposed action to the following entities:

(1) Any City or County within or abutting the area covered by the proposal, and any special district which may be significantly affected by the proposed action.

(2) Any elementary, high school, or unified school district within the area covered by the proposed action.

(3) The Local Agency Formation Commission.

(4) Any area-wide planning agency whose operations may be significantly affected by the proposed action.

(5) Any Federal Agency if its operations or land within its jurisdiction may be significantly affected by the proposed action.

(c) Notice of Public Hearings for Revocations. The Director of Community Development, in giving notice of a public hearing to revoke a Conditional Use Permit, Variance, or Site Development Permit,



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Coastal Development Permit, or other entitlement, shall observe the noticing requirements set forth as follows:

(1) Notification shall be provided as prescribed in Section 9.61.050; and

(2) The Director shall serve the owner of the premises involved written notice of such hearing, by registered or certified mail, return receipt requested and by posting a copy of said notice in a conspicuous location on the property.

(d) Continuances. If, for any reason, testimony on a case cannot be heard or completed at the time set for such hearing, the Planning Commission may continue or extend the hearing to another time. Before adjournment or recess, the Planning Commission chairman shall publicly announce the time and place at which the hearing will be continued.

(e) Failure To Receive Notice. The failure of any person or entity to receive notice required pursuant to this Section shall not constitute grounds to invalidate the proceedings or actions of the City in regards to the item for which the notice was given.

9.75.010 "A" Definitions and Illustrations.

**"Accessory Dwelling Unit"- means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. An ADU shall contain the necessary interior amenities, including but not limited to "provisions for cooking" which at minimum includes electrical outlets to plug in a hot plate, microwave, etc., subject to California Building Code requirements.**

9.75.070 "G" Definitions and Illustrations.

**Granny Flat— See Section 9.75.270.**

9.75.100 "J" Definitions and Illustrations.

**None.**

**"Junior Accessory Dwelling Unit"- means a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit may include separate sanitation facilities or may share sanitation facilities with the existing structure.**

9.75.190 "S" Definitions and Illustrations.

**"Second Dwelling Units"— See Section 9.75.270.**

9.75.270 Definitions of Use.

**"Granny" Flat — shall mean an additional dwelling unit on a parcel designated for a single family residence intended for the sole occupancy of**

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~~one or two adult persons who are 62 years of age or older pursuant to Government Code Section 65852.1.~~

~~Second Dwelling Unit — shall mean an additional dwelling unit on a lot which is zoned for single family or multiple family use and which contains an existing single family dwelling. The unit is not intended for sale and may be rented. The additional dwelling unit may be attached or detached from the primary residence and must be developed pursuant to Government Code Section 65852.2.~~

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### EXHIBIT "B"

#### 9.07.210 Accessory Dwelling Units

(a) Pursuant to the provisions of California Government Code Section 65852.2, or any successor statute, the following shall provide development standards to ensure the orderly development of accessory dwelling units (ADU) in the City. Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20(commencing with Section 30000) of the Public Resource Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

(b) Improvements (including, but not limited to garages, retaining walls, etc.) that are not necessary for the physical construction of an accessory dwelling unit may be subject to a discretionary permit and/or public hearing, if required by Title 9 of the Municipal Code.

(c) Development Standards. The development standards set forth below shall apply to all ADUs. In addition, for any development standard not explicitly identified below, the requirements of the underlying zoning district may apply, unless superseded by State Law.

- (1) Zoning. Accessory dwelling units shall be allowed in all zoning districts that allow single-family and multi-family residential development.
- (2) Sale and Rental of Units. The accessory dwelling unit shall not be sold separately from the primary dwelling unit and shall not be rented for less than thirty (30) days.
- (3) Deed Restriction. A Deed Restriction prepared by the City shall be recorded on the subject lot prior to issuance of building permits stating that the ADU is subject to the requirements of this Section, shall not be sold separately from the primary dwelling unit, and shall not be rented for less than 30 days.
- (4) Number of Units Allowed.
  - (A) Single Family Residential Zoning Districts. In single family residential zoning districts, an applicant shall be allowed to construct one (1) detached or attached ADU per lot. Pursuant to Government Code 65852.2, in addition to the one (1)

attached or detached ADU allowed in this this Section, an applicant may also construct one (1) junior accessory dwelling unit so long as it complies with the requirements of California Government Code Section 65852.22.

(B) Multi-Family Zoning Districts. In multi-family zoning districts, an applicant shall be allowed to construct at least one (1) ADU per existing multi-family structure. In addition, an applicant may be allowed to construct a number of ADUs that is equivalent to up to twenty-five percent (25%) of the existing units of the existing multi-family structure if City Staff determines that all building code standards can be met and the applicant acquires a city-approved building permit. Notwithstanding the foregoing, no more than two (2) detached ADUs may be constructed on a parcel with an existing multi-family structure.

(5) Setbacks/Height Limitation. Attached or detached ADUs shall have four (4) foot side and rear yard setback. No portion of an attached or detached ADU shall project into the required front yard setback of the underlying zoning district unless allowed by California Government Code Sections 65852.2(c)(2)(C) or 65852.2(e)(1)(B)(D).

(A) All detached ADUs shall be allowed to be a minimum of sixteen (16) feet in height. Notwithstanding the foregoing, if the detached ADU is constructed above an existing or proposed detached garage, then it must be constructed in a manner that is consistent with the height limitation and setback requirements of the underlying zoning district.

(B) If an ADU is attached to an existing or proposed primary dwelling or garage and meets all applicable setbacks of the underlying zoning district, then the ADU may be developed consistent with the maximum height limitation set forth in the underlying zoning district, pursuant to all of the provisions of this Section, and the provisions of Section 9.05.110. Any attached ADU shall be permitted to be a minimum of 16 feet in height.

(C) ADUs shall only be permitted to be constructed above an attached or detached garage if the underlying zoning district allows for such construction and the existing or proposed primary dwelling is two stories.

- (6) Building Separation. An attached or detached ADU shall be subject to building separation requirements of the underlying zoning district, unless a lesser separation is needed to allow for at least an 800 square foot ADU.
- (7) Legally existing detached accessory structures which do not meet the minimum setbacks requirements of Subsection (6), may be converted to an ADU, subject to the approval of a building permit and Fire Safety/Building Code (California Government Code 65852.2(e)(1)(A)).
- (8) Unit Size. The maximum size of an attached or detached ADU shall be limited to 1,000 square feet (California Government Code Section 65852.2(c)(2)(C)).
- (9) Architectural compatibility. Any attached or detached ADU must maintain the general character of a single-family neighborhood as determined by the Community Development Director as part of the ministerial approval process. Architectural design shall be consistent with the primary residential dwelling unit.
- (10) Historic Resources. An ADU shall not negatively impact a Historic Resource that is listed on or eligible for listing on a local, state, or national registry or inventory pursuant to California Government Code Section 65852.2(a)(1)(B).
- (11) Parking. No additional parking shall be required for an ADU, other than that which is required for the primary residence. If an existing garage is converted to an ADU, replacement parking cannot be required pursuant to California Government Code Section 65852.2.
- (12) Access. All ADUs are required to have separate exterior access from the primary residence.
- (13) Fire Sprinklers. Fire sprinklers shall not be required for any attached or detached ADU, unless required for the primary residence due to the construction of a new ADU pursuant to California Government Code 65852.2(e)(1)(A).
- (14) Flood Plain Zone. For lots located within the identified Floodplain Overlay District, all ADUs shall meet the requirements specified in Dana Point Zoning Code Chapter 9.31.
- (15) Other Provisions.

(A) All ADUs shall contain the necessary interior amenities, including "provisions for cooking" which at minimum includes electrical outlets to plug in a hot plate, microwave, etc., subject to California Building Code requirements.

(B) All ADUs must meet the requirements of the California Building/Residential Code, as adopted and amended by Title 8 of the City of Dana Point Municipal Code.

(d) **Affordability Incentives.** To promote the development of very-low and low-income residential units and to meet the City's Regional Housing Needs Assessment (RHNA) goals, the City may approve the use of economic incentives, including but not limited to reduced or waived plan check fees and/or the allowance of ADUs in additional zoning districts where there is an associated, legal residential use. If the subject incentives are utilized, a deed restriction shall be required to be recorded prior to building permit issuance stating that, the ADU shall be occupied by very-low to low-income households for a 55 year period. An annual report shall be submitted to the City of Dana Point Community Development Department to verify compliance with the income restriction requirements. If more than one incentive is utilized, the occupant(s) shall qualify as a very low household.

#### 9.07.215 Junior Accessory Dwelling Units

(a) Pursuant to the provisions of California Government Code Section 65852.22, or any successor statute, the following shall provide development standards to ensure the orderly development of junior accessory dwelling units (JADU) in the City. Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resource Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

(b) **Development Standards.** The development standards set forth in subsection (c) shall apply to all JADUs.

(c) **Local Requirements for all Junior Accessory Dwelling Units.**

(1) **Sale, Rental and Occupation of Units.** The JADU shall not be sold separately from the primary dwelling unit and shall not be rented for less than thirty (30) days. In addition, either the JADU or the primary dwelling in which the JADU is located shall be occupied by the property owner at all times, unless the property is owned by a government agency, land trust or housing organization.

- (2) Deed Restriction. A Deed Restriction prepared by the City shall be recorded on the subject property prior to issuance of building permits stating that the JADU is subject to the requirements of this Section, shall not sold separately from the primary dwelling unit, shall not be rented for less than 30 days, and that either the JADU or the primary dwelling in which the JADU is located shall be occupied by the property owner at all times.
- (3) Number of Units Allowed.
  - (A) Single Family Residential Zoning Districts. In single family residential zoning districts, an applicant shall be allowed to construct one (1) JADU within the walls of an existing or proposed primary residence. Pursuant to Government Code 65852.2, in addition to the one (1) junior accessory dwelling unit allowed in this Section, an applicant may also construct one (1) attached or detached ADU allowed so long as it complies with the requirements of Section 9.07.215.
  - (B) Multi-Family Zoning Districts. A JADU may be created within a legal multi-family residential unit. All JADUs shall require building permits and must meet building code standards.
- (4) Unit Size and Construction.
  - (A) A JADU shall not exceed 500 square feet.
  - (B) A JADU must be contained within the walls of an existing or proposed primary dwelling, except an application for a JADU may include an addition if necessary to accommodate ingress and egress. A JADU may be located on the second floor of an existing or proposed primary dwelling.
  - (C) All JADUs shall contain the necessary interior amenities, including "provisions for cooking" which at minimum includes electrical outlets to plug in a hot plate, microwave, etc., subject to California Building Code requirements.
- (5) JADUs may share sanitation facilities with the primary residence.
- (6) Exterior access must be provided for all JADUs separate from the main entrance to the primary residence.

- (7) Any new construction which provides exterior access shall be architecturally consistent with the existing primary residential unit and approved ministerially.
  - (8) All JADUs must meet the requirements of the California Building Code, as adopted and amended by Title 8 of the City of Dana Point Municipal Code.
  - (9) Fire sprinklers shall be required for a JADU, if they are required for the primary residence.
  - (10) Flood Plain Zone. All JADUs constructed within the Floodplain Overlay District shall meet the requirements set forth in Chapter 9.31.
- (d) Affordability Incentives. To promote the development of very-low and low-income residential units and to meet the City's Regional Housing Needs Assessment (RHNA) goals, the City may approve the use of economic incentives, including but not limited to reduced or waived plan check fees and/or the allowance of ADUs in additional zoning districts where there is an associated, legal residential use. If the subject incentives are utilized, a deed restriction shall be required to be recorded prior to building permit issuance stating that, if rented, the JADU shall be occupied by very-low to low-income households for a 55 year period. An annual report shall be submitted to the City of Dana Point Community Development Department to verify compliance with the income restriction requirements. If more than one incentive is utilized, the occupant(s) shall qualify as a very low household.

**Chapter 9.35 Access, Parking and Loading**  
**9.35.060 Parking Requirements**

- (c)(3) Joint Use of Parking Facilities. Multiple uses on multiple building sites may establish joint use parking facilities within one or more parking areas located within such multiple building sites, provided the following requirements are met:
- (A) A detailed joint use parking plan shall be approved by a Minor Site Development Permit issued by the Director of Community Development pursuant to Chapter 9.71. The plan shall show and explain all parking facilities, uses and structures that will use the parking and the pedestrian access from the parking facilities to the uses and structures.
  - (B) The boundary of the parking facilities shall be within ¼ mile of the uses they serve and connected to the site by an adequate pedestrian path or sidewalk to the satisfaction of the Director of Community Development.



(C) Adequate assurance, to the satisfaction of the Director of Community Development, shall be provided to guarantee that required parking will continue to be maintained in compliance with applicable provisions of this Chapter. This assurance shall be recorded in the office of the Orange County Recorder on all properties utilizing the joint use parking facilities.

**9.61.050 Notice and Conduct of Public Hearings.**

(a) Notice of Hearings for Review of Applications. No less than fourteen (14) calendar days prior to the date of a public hearing on development applications, the Director of Community Development shall give notice including the time and the place at which the application will be heard, the identity of the hearing body or officer, nature of the application (including but not limited to the date of filing of the application, the name of the applicant, the file number assigned to the application, and a description of the development), a brief description of the general procedure of the City of Dana Point concerning the conduct of hearing and local actions, and the general location of the property under consideration. If the application is for a coastal development permit which is appealable to the Coastal Commission, the notice shall indicate this fact and shall describe the process for local and Coastal Commission appeals, including any local fees required. (14 Cal. Code of Regulations/13565, 13568). The Director shall observe the following notice requirements:

- (1) The notice shall be posted in three (3) places in the City of Dana Point designated by Resolution of the City Council.
- (2) The notice shall be advertised in a newspaper circulated within the City of Dana Point.
- (3) The notice shall be mailed via first class mail to the applicant(s); to the property owner(s) or the property owner's agent(s); to all persons listed as owners of property within five hundred (500) feet of the exterior boundary of the subject property on the notification list required in Section 9.61.040, and if the subject property is located in the Coastal Zone, to the office of the Coastal Commission having jurisdiction over the City of Dana Point and to all persons listed as occupants of dwelling units within one hundred (100) feet of the exterior boundary of the subject property on the notification list required in Section 9.61.040.

Notice shall also be provided to anyone filing a written request and paying the cost for notification and to such other persons whose property might, in the Director's judgment, be affected by the proposed application. For coastal development permit applications, the Director shall also provide notice by first class mail free of charge to all persons who have requested to be on the mailing list for that development project or the mailing list for all coastal decisions within the City of Dana Point.

(4) For all non-residential projects requiring a public hearing, at least fourteen (14) calendar days prior to the date of public hearing, the applicant shall post at the project site three (3) notices of public hearing in conspicuous places, with at least two (2) of the notices located adjacent and facing the public right-of-way so that they may be visible to both pedestrians and vehicular traffic. The required public notices will be provided by the Planning Division to the applicant, and the applicant shall provide visual evidence and a signed affidavit of posting.

(5) If the Director finds that the posting and mailing of notices prescribed in this Section may not give sufficient notice to the affected property owners, then additional notices may be posted at locations which are best suited to reach the attention of, and properly inform those persons who may be affected.

(6) When the proposed entitlement affects more than 1,000 (one thousand) property owners, the required notice may be provided by placing a 1/8 page display advertisement in a newspaper circulated within the City of Dana Point. Such notice shall be considered an acceptable substitute for the published notice required in subsection (2) and the mailed notice required in subsection (3). However, in the case of coastal development permit applications, newspaper notice shall not substitute for the mailed notice required in subsection (3) above.

(7) The notice shall be sent to public officers, departments, bureaus, or agencies which, in the determination of the Director of Community Development, could be affected by the application or otherwise require noticing.

(8) When a Negative Declaration is recommended for adoption pursuant to the California Environmental Quality Act (CEQA), notice of intent to adopt a Negative Declaration shall be published no less than twenty-one (21) days prior to the hearing date, or thirty (30) days prior to the hearing date for applications which require circulation of the Negative Declaration to the State Clearinghouse.

(9) Notice for Timeshare Properties.

(A) If a timeshare property falls within the one hundred (100) foot occupant-notification radius for Coastal Development Permits described in (8) above, all shareholders shall be notified as described in subsection (3) above.

(B) If a timeshare property falls outside the one hundred (100) foot occupant-notification radius described in subsection (8) above, but within the five hundred (500) foot property owner-notification radius described in subsection (3) above, notices shall be sent to the property manager/sales agent for the timeshare, the shareholders association for the timeshare

where one exists, and one notice to each physical unit in the timeshare, addressed to "Occupant."

(b) Notice for General Plan Amendments. Prior to any amendment to the General Plan, the Community Development Department shall forward the proposed action to the following entities:

- (1) Any City or County within or abutting the area covered by the proposal, and any special district which may be significantly affected by the proposed action.
- (2) Any elementary, high school, or unified school district within the area covered by the proposed action.
- (3) The Local Agency Formation Commission.
- (4) Any area-wide planning agency whose operations may be significantly affected by the proposed action.
- (5) Any Federal Agency if its operations or land within its jurisdiction may be significantly affected by the proposed action.

(c) Notice of Public Hearings for Revocations. The Director of Community Development, in giving notice of a public hearing to revoke a Conditional Use Permit, Variance, or Site Development Permit, Coastal Development Permit, or other entitlement, shall observe the noticing requirements set forth as follows:

- (1) Notification shall be provided as prescribed in Section 9.61.050; and
- (2) The Director shall serve the owner of the premises involved written notice of such hearing, by registered or certified mail, return receipt requested and by posting a copy of said notice in a conspicuous location on the property.

(d) Continuances. If, for any reason, testimony on a case cannot be heard or completed at the time set for such hearing, the Planning Commission may continue or extend the hearing to another time. Before adjournment or recess, the Planning Commission chairman shall publicly announce the time and place at which the hearing will be continued.

(e) Failure To Receive Notice. The failure of any person or entity to receive notice required pursuant to this Section shall not constitute grounds to invalidate the proceedings or actions of the City in regards to the item for which the notice was given.

**9.75.010 "A" Definitions and Illustrations.**

"Accessory Dwelling Unit"- means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. An ADU shall contain the necessary interior amenities, including but not limited to

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“provisions for cooking” which at minimum includes electrical outlets to plug in a hot plate, microwave, etc., subject to California Building Code requirements.

9.75.100 “J” Definitions and Illustrations.

“Junior Accessory Dwelling Unit”- means a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit may include separate sanitation facilities or may share sanitation facilities with the existing structure.

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Supporting Document 2: Redline version of changes recommended by HCD

9.07.210 Accessory Dwelling Units

(a) Pursuant to the provisions of California Government Code Section 65852.2, or any successor statute, the following shall provide development standards to ensure the orderly development of accessory dwelling units (ADU) in the City. Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20(commencing with Section 30000) of the Public Resource Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

(b) Improvements (including, but not limited to garages, retaining walls, etc.) that are not necessary for the physical construction of an accessory dwelling unit may be subject to a discretionary permit and/or public hearing, if required by Title 9 of the Municipal Code.

(c) Development Standards. The development standards set forth below shall apply to all ADUs. In addition, for any development standard not explicitly identified below, the requirements of the underlying zoning district may apply, unless superseded by State Law.

- (1) Zoning. Accessory dwelling units shall ~~only~~ be allowed in ~~single family residential and multi-family residential zoning districts~~ ~~all zoning districts that allow single-family and multi-family residential development~~.
- (2) Sale and Rental of Units. The accessory dwelling unit shall not be sold separately from the primary dwelling unit and shall not be rented for less than thirty (30) days.
- (3) Deed Restriction. A Deed Restriction prepared by the City shall be recorded on the subject lot prior to issuance of building permits stating that the ADU is subject to the requirements of this Section. shall not be sold separately from the primary dwelling unit, and shall not be rented for less than 30 days.
- (4) Number of Units Allowed.
  - (A) Single Family Residential Zoning Districts. In single family residential zoning districts, an applicant shall be allowed to construct one (1) detached or attached ADU per lot. Pursuant to Government Code 65852.2, in addition to the one (1) attached or detached ADU allowed in this this Section, an applicant may also construct one (1) junior accessory dwelling unit so long as it

complies with the requirements of ~~Section 9.07.215~~ California Government Code Section 65852.22.

- (B) Multi-Family Zoning Districts. In multi-family zoning districts, an applicant shall be allowed to construct at least one (1) ADU per existing multi-family ~~development structure~~. In addition, an applicant may be allowed to construct a number of ADUs that is equivalent to up to twenty-five percent (25%) of the existing units of the existing multi-family ~~development structure~~ if City Staff determines that all building code standards can be met and the applicant acquires a city-approved building permit. Notwithstanding the foregoing, no more than two (2) detached ADUs may be constructed on a parcel with an existing multi-family ~~development structure~~.
- (5) Setbacks/Height Limitation. Attached or detached ADUs shall have four (4) foot side and rear yard setback. No portion of an attached or detached ADU shall project into the required front yard setback of the underlying zoning district ~~unless allowed by California Government Code Sections 65852.2(c)(2)(C) or 65852.2(e)(1)(B)(D)~~.
- (A) All detached ADUs shall be ~~limited to one story (1 story) and allowed to be a maximum~~ of sixteen (16) feet in height. Notwithstanding the foregoing, if the detached ADU is constructed above an existing or proposed detached garage, then it must be constructed in a manner that is consistent with the height limitation and setback requirements of the underlying zoning district.
- (B) If an ADU is attached to an existing or proposed primary dwelling or garage and meets all applicable setbacks of the underlying zoning district, then the ADU may be developed consistent with the maximum height limitation set forth in the underlying zoning district, pursuant to all of the provisions of this Section, and the provisions of Section 9.05.110. ~~Any attached ADU shall be permitted to be a minimum of 16 feet in height.~~
- (C) ADUs shall only be permitted to be constructed above an attached or detached garage if the underlying zoning district allows for such construction and the existing or proposed primary dwelling is two stories.



- (6) Building Separation. An attached or detached ADU shall be subject to ~~to a ten foot building separation requirements of the underlying zoning district, unless a lesser separation is needed to allow for at least an 800 square foot ADU.~~
- (7) Legally existing detached accessory structures which do not meet the minimum setbacks requirements of Subsection (6), may be converted to an ADU, subject to the approval of a building permit and ~~of this Section Fire Safety Building Code (California Government Code 65852.2(e)(1)(A)).~~
- (8) Unit Size. The maximum size of an attached or detached ADU shall be limited to ~~850~~ 1,000 square feet ~~(California Government Code Section 65852.2(c)(2)(C)) and no more than one (1) bedroom. Notwithstanding the foregoing, in no event shall the square footage of an attached ADU shall not exceed fifty percent (50%) of the habitable area of the existing primary residence.~~
- (9) Architectural compatibility. Any attached or detached ADU must maintain the general character of a single-family neighborhood as determined by the Community Development Director as part of the ministerial approval process. Architectural design shall be consistent with the primary residential dwelling unit.
- (10) Historic Resources. An ADU shall not negatively impact a Historic Resource that is listed on or eligible for listing on a local, state, or national registry or inventory pursuant to California Government Code Section 65852.2(a)(1)(B).
- (11) Parking. No additional parking shall be required for an ADU, other than that which is required for the primary residence. If an existing garage is converted to an ADU, replacement parking cannot be required pursuant to California Government Code Section 65852.2.
- (12) Access. All ADUs are required to have separate exterior access from the primary residence.
- (13) Fire Sprinklers. Fire sprinklers shall not be required for any attached or detached ADU, unless required for the primary residence due to the construction of a new ADU pursuant to California Government Code 65852.2(e)(1)(A).

(14) Flood Plain Zone. For lots located within the identified Floodplain Overlay District, all ADUs shall meet the requirements specified in Dana Point Zoning Code Chapter 9.31.

(15) Other Provisions.

(A) All ADUs shall contain the necessary interior amenities, including “provisions for cooking” which at minimum includes electrical outlets to plug in a hot place, microwave, etc., subject to California Building Code requirements, but not limited to Kitchen facilities, necessary to meet the definition of the term Dwelling Unit, as those terms are defined in Sections 9.75.040 and 9.75.110 of the City’s Zoning Code.

(B) All ADUs must meet the requirements of the California Building/Residential Code, as adopted and amended by Title 8 of the City of Dana Point Municipal Code.

(d) Affordability Incentives. To promote the development of very-low and low-income residential units and to meet the City’s Regional Housing Needs Assessment (RHNA) goals, the City may approve the use of economic incentives, including but not limited to reduced or waived plan check fees and/or the allowance of ADUs in additional zoning districts where there is an associated, legal residential use. If the subject incentives are utilized, a deed restriction shall be required to be recorded prior to building permit issuance stating that, the ADU shall be occupied by very-low to low-income households for a 55 year period. An annual report shall be submitted to the City of Dana Point Community Development Department to verify compliance with the income restriction requirements. If more than one incentive is utilized, the occupant(s) shall qualify as a very low household.

#### 9.07.215 Junior Accessory Dwelling Units

(a) Pursuant to the provisions of California Government Code Section 65852.22, or any successor statute, the following shall provide development standards to ensure the orderly development of junior accessory dwelling units (JADU) in the City. Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resource Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

(b) Development Standards. The development standards set forth in subsection (c) shall apply to all JADUs. In addition, for any development standard not



~~explicitly identified in subsection (d), the requirements of the underlying zoning district shall apply.~~

(c) Local Requirements for all Junior Accessory Dwelling Units.

- (1) Sale, Rental and Occupation of Units. The JADU shall not be sold separately from the primary dwelling unit and shall not be rented for less than thirty (30) days. In addition, either the JADU or the primary dwelling in which the JADU is located shall be occupied by the property owner at all times, unless the property is owned by a government agency, land trust or housing organization.
- (2) Deed Restriction. A Deed Restriction prepared by the City shall be recorded on the subject property prior to issuance of building permits stating that the JADU is subject to the requirements of this Section, shall not sold separately from the primary dwelling unit, shall not be rented for less than 30 days, and that either the JADU or the primary dwelling in which the JADU is located shall be occupied by the property owner at all times.
- (3) Number of Units Allowed.
  - (A) Single Family Residential Zoning Districts. In single family residential zoning districts, an applicant shall be allowed to construct one (1) JADU within the walls of an existing or proposed primary residence. Pursuant to Government Code 65852.2, in addition to the one (1) junior accessory dwelling unit allowed in this Section, an applicant may also construct one (1) attached or detached ADU allowed so long as it complies with the requirements of Section 9.07.215.
  - (B) Multi-Family Zoning Districts. A JADU may be created within a legal multi-family residential unit. All JADUs shall require building permits and must meet building code standards.
- (4) Unit Size and Construction.
  - (A) A JADU shall not exceed 500 square feet ~~and shall not contain more than one (1) bedroom.~~
  - (B) A JADU must be contained within the walls of an existing or proposed primary dwelling, except an application for a JADU ~~may allow for an expansion of no more than one hundred fifty (150) square feet beyond the same physical dimensions of the existing structure~~ may include an addition if necessary to accommodate ingress and egress. A JADU may be located on

~~the second floor of an existing or proposed primary dwelling if the area where the JADU is proposed is located outside of the setback requirements of the underlying zoning district.~~

~~(C) All JADUs shall contain the necessary interior amenities, including "provisions for cooking" which at minimum includes electrical outlets to plug in a hot place, microwave, etc., subject to California Building Code requirements, but not limited to Kitchen facilities, necessary to meet the definition of the term Dwelling Unit, as those terms are defined in Sections 9.75.040 and 9.75.110 of the City's Zoning Code.~~

(5) JADUs may share sanitation facilities with the primary residence.

(6) Exterior access must be provided for all JADUs separate from the main entrance to the primary residence.

(7) Any new construction which provides exterior access shall be architecturally consistent with the existing primary residential unit and approved ministerially.

~~(8) Historic Resource. No JADU shall negatively impact a Historic Resource(s) that is listed or eligible for listing on a local, state, or national registry or inventory.~~

(9) All JADUs must meet the requirements of the California Building Code, as adopted and amended by Title 8 of the City of Dana Point Municipal Code.

(10) Fire sprinklers shall be required for a JADU, if they are required for the primary residence.

~~(12) Parking. No additional parking shall be required for a JADU, other than that which is required for the primary residence.~~

(13) Flood Plain Zone. All JADUs constructed within the Floodplain Overlay District shall meet the requirements set forth in Chapter 9.31.

(d) Affordability Incentives. To promote the development of very-low and low-income residential units and to meet the City's Regional Housing Needs Assessment (RHNA) goals, the City may approve the use of economic incentives, including but not limited to reduced or waived plan check fees and/or the allowance of ADUs in additional zoning districts where there is an associated, legal residential use. If the subject incentives are utilized, a deed restriction shall be required to be recorded prior to building permit issuance

stating that, if rented, the JADU shall be occupied by very-low to low-income households for a 55 year period. An annual report shall be submitted to the City of Dana Point Community Development Department to verify compliance with the income restriction requirements. If more than one incentive is utilized, the occupant(s) shall qualify as a very low household.

9.75.010 "A" Definitions and Illustrations.

"Accessory Dwelling Unit"- means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. An ADU shall contain the necessary interior amenities, including "provisions for cooking" which at minimum includes electrical outlets to plug in a hot place, microwave, etc., subject to California Building Code requirements, but not limited to Kitchen facilities, necessary to meet the definition of the term Dwelling Unit, as those terms are defined in Sections 9.75.040 and 9.75.110 of the City's Zoning Code.

9.75.070 "G" Definitions and Illustrations.

~~Granny Flat — See Section 9.75.270.~~

9.75.100 "J" Definitions and Illustrations.

~~None.~~

"Junior Accessory Dwelling Unit"- means a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit may include separate sanitation facilities or may share sanitation facilities with the existing structure.

9.75.190 "S" Definitions and Illustrations.

~~"Second Dwelling Units" — See Section 9.75.270.~~

9.75.270 Definitions of Use.

~~"Granny" Flat — shall mean an additional dwelling unit on a parcel designated for a single family residence intended for the sole occupancy of one or two adult persons who are 62 years of age or older pursuant to Government Code Section 65852.1.~~

~~Second Dwelling Unit — shall mean an additional dwelling unit on a lot which is zoned for single family or multiple family use and which contains an existing single family dwelling. The unit is not intended for sale and may be rented. The additional dwelling unit may be attached or detached from the primary residence and must be developed pursuant to Government Code Section 65852.2.~~

Supporting Document 3: April 13, 2020 Planning Commission Staff Report (excerpted)

CITY OF DANA POINT  
PLANNING COMMISSION  
AGENDA REPORT

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**DATE:** APRIL 13, 2020

**TO:** DANA POINT PLANNING COMMISSION

**FROM:** COMMUNITY DEVELOPMENT DEPARTMENT  
BRENDA WISNESKI, DIRECTOR  
SEAN NICHOLAS, SENIOR PLANNER

**SUBJECT:** LOCAL COASTAL PROGRAM AMENDMENT LCPA19-0002/ZONE TEXT  
AMENDMENT ZTA19-0002, RELATED TO ACCESSORY DWELLING  
UNITS, JOINT PARKING AND PUBLIC NOTIFICATION

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**RECOMMENDATION:** That the Planning Commission adopt the attached draft resolution recommending the City Council approve Local Coastal Program Amendment LCPA19-0002/Zone Text Amendment ZTA19-0002 (Action Document 1).

**APPLICANT:** City of Dana Point

**REQUEST:** A request for modifications to the Dana Point Zoning Code including the local Accessory Dwelling Unit requirements consistent with State Law.

**LOCATION:** Citywide

**NOTICE:** A 1/8<sup>th</sup> page notice was published in the Dana Point News on April 3, 2020, and notices were posted on April 3, 2020 at Dana Point City Hall, the Dana Point post office, the Capistrano Beach post office, and the Dana Point Library. The same notice was sent to the Coastal Commission.

The required LCPA notification of the 6 week review notices were posted on the City Website and mailed to the Coastal Commission, adjacent jurisdictions, SCWD, and State Parks and Recreation.

**ENVIRONMENTAL:** Pursuant to the California Environmental Quality Act (CEQA) staff has determined that the project is exempt from CEQA pursuant

to Section 15265(f) as CEQA does not apply to a local government's preparation of a local coastal program amendment.

**ISSUES:**

1. Is the proposal consistent with the City's adopted General Plan?
2. Is the proposal consistent with the California Coastal Act?
3. Is the proposal consistent with the Local Coastal Program Amendment procedures as set forth in the Dana Point Zoning Ordinance, Section 9.61.080?

**BACKGROUND:**

At the July 8, 2019 Planning Commission meeting, staff introduced concepts associated with the "Joint Use of Parking Facilities" and landscape regulations. At the November 18, 2019 Planning Commission meeting, staff presented follow-up information to questions posed at the July 8<sup>th</sup> meeting. Based on the feedback from the November 18<sup>th</sup> meeting, additional research is needed related to the landscape regulations, and it has been removed from the proposed modifications.

Previously, at the May 14, 2018 Planning Commission meeting, the Commission requested staff evaluate ways to improve public awareness of public hearings. Staff has completed this analysis and has drafted potential improvements to the public notification process.

On January 1, 2020, new state-mandated requirements came into effect to streamline and promote the development of accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs). The proposed Zoning Code amendment is developed to be consistent with the State law.

On March 9, 2020, staff and the Planning Commission conducted a public workshop that focused on the three amendment topics: 1) joint use of parking requirements, 2) public notification requirements, and 3) accessory dwelling units/junior accessory dwelling units. The comments and feedback from that meeting have been incorporated into the draft language within the attached Resolution (Action Document 1).

**DISCUSSION:**

Amendments to the DPZC and LCP are legislative actions and therefore the role of the Planning Commission is to make a recommendation to City Council.

**Joint Use of Parking Facilities**

Pursuant to the Citywide Parking Implementation Plan and public workshops, staff has



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drafted language that will expand the distance that parking facilities can be shared from 300 feet to ¼ mile. Based on Planning Commission feedback related providing better certainty in the review process, the word “attractive” has been removed from DPZC Section 9.35.060 (c)(3)(B) as it is a subjective standard.

*Public Notification Modifications*

The 2018 Zoning Code Update included discussions related to story poles. From that discussion, the public indicated a desire for improved notification of public hearings. In response, the Planning Commission asked staff to assess the public notification process and evaluate improvements. At the March 9, 2020 public workshop, the Commission expressed support for increasing the noticing period and on-site posting.

At the workshop, Commissioners noted the benefit of the public contacting staff prior to Planning Commission meetings to become better informed and ask questions, and requested measures to encourage this communication. Staff contact information is included in the public notices and the City website. As a result of the Commissioners comments, staff contact information is also now on the Planning Commission agenda. No modifications to DPZC is needed to address this goal.

Lastly, the use of technology to notify the public was also discussed. When a large number of public inquiries are received an interested party list is created for direct communication regarding public hearings or other project milestones. In addition, planning staff continues to update the City's Development Pipeline, located at [www.aboutdanapoint.com](http://www.aboutdanapoint.com). There is also an option to sign up for an electronic newsletter for the City of Dana Point on aboutdanapoint.com.

*Accessory Dwelling Units/Junior Accessory Dwelling Units*

Supporting Document 2 compares the 2017 ADU State law, the 2020 ADU State law, and staff recommended local ADU requirements. The table also provides optional regulations that may be incorporated into the local ADU requirements.

At the March 9<sup>th</sup> workshop, the Planning Commission provided direction regarding a number of issues, and based on these comments, the proposed ADU/JADU Ordinance has been updated as follows:

*Height Limitations*

Consistent with the State statute, attached and detached ADUs shall be limited to 16 feet in height. The revised version of this Ordinance also clarifies that ADUs can be located on top of attached or detached garages so long as: (1) they are in compliance with height and set

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back requirements of the underlying zoning district; and (2) the primary dwelling is two stories in height. JADUs can be located on the second floor of an existing residential unit, as long as independent exterior access can be provided with an addition of 150 square feet or less.

*Building Separation*

Pursuant to the Commission's direction, the revised Ordinance also expressly requires compliance with the building separation standard of the underlying zoning district.

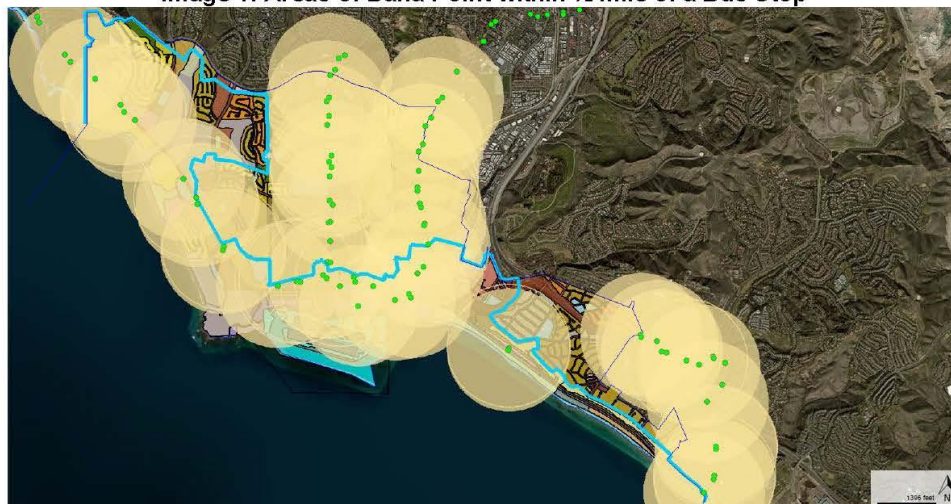
*Unit Size and Bedroom Count Limitations*

At the March meeting, the Planning Commission directed Staff to consider whether the City could limit the number of bedrooms to studios in multi-family residential districts, and one bedrooms in single family zoning districts. After further analysis, Staff determined that because of the State Law requirements relating to maximum square footage (which effectively require cities to allow for an 850 square foot ADU regardless of whether the unit is a studio or a one-bedroom), Staff recommends including a requirement that all ADUs must not exceed 850 square feet and contain no more than one bedroom regardless of the zoning district within which it is located.

*Parking*

The State statute generally allows for a local jurisdiction to require one parking space per ADU; however, there are numerous exceptions to this requirement where parking cannot be required. At the public workshop, Image 1, was provided to show the areas where parking could not be required because of the multiple exceptions to the general rule. This image is replicated below:

Image 1: Areas of Dana Point within ½ mile of a Bus Stop



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At the Planning Commission workshop, the Commission noted that because the areas where parking could not be required were so expansive, the Planning Commission recommended eliminating the parking requirement for all new ADUs. This provision is thus included in the revised Ordinance.

*Affordability Incentives*

There is an affordable housing shortage in Orange County. In addition, the City of Dana Point has been given a Regional Housing Need Assessment (RHNA) number of 529. To help reach Dana Point's RHNA numbers, the Planning Commission discussed creating incentives in exchange for deed restricted affordable units. Staff has included the following language in the draft ordinance:

**(d) Affordability Incentives. To promote the development of very-low and low-income residential units and to meet the City's Regional Housing Needs Assessment (RHNA) goals, the City may approve the use of economic incentives, including but not limited to reduced or waived plan check fees and/or the allowance of ADUs in additional zoning districts where there is an associated, legal residential use. A deed restriction shall be required to be recorded prior to building permit issuance stating that the ADU shall be occupied by very-low to low-income households for a 55 year period. An annual report shall be submitted to the City of Dana Point Community Development Department to verify compliance with the income restriction requirements. If more than one incentive is utilized, the occupant(s) shall qualify as a very low household.**

**CONCLUSION:**

Staff recommends the Planning Commission consider public testimony and adopt a resolution recommending the City Council adopt the proposed LCPA and ZTA for the proposed Zoning Code Cleanup.

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Sean Nicholas, AICP  
Senior Planner

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Brenda Wisneski, AICP  
Director of Community Development