

## ITEM 5

**From:** [Brenda Wisneski](#)  
**To:** [Farrell, Jennifer J.](#); [Martha Ochoa](#)  
**Subject:** FW: CalHDF comment re ADU ordinance for 11/25/24 Planning Commission meeting  
**Date:** Monday, November 25, 2024 3:57:01 PM  
**Attachments:** [Dana Point - ADU Ordinance Comment - 25 Nov 2024 - PC.pdf](#)

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Item #5

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**From:** James Lloyd <james@calhdf.org>  
**Sent:** Monday, November 25, 2024 3:50 PM  
**To:** Mary Opel <MOpel@DanaPoint.org>; Eric Nelson <ENelson@DanaPoint.org>; Luke Boughen <LBoughen@danapoint.org>; Ashok Dhingra <adhingra@danapoint.org>; Deana Christakes <dchristakes@danapoint.org>  
**Cc:** Munoz, Patrick <pmunoz@rutan.com>; Sea Shelton <sshelton@danapoint.org>; Mike Killebrew <MKILLEBREW@DanaPoint.org>; Brenda Wisneski <BWisneski@DanaPoint.org>  
**Subject:** CalHDF comment re ADU ordinance for 11/25/24 Planning Commission meeting

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Dear Dana Point Planning Commission,

The California Housing Defense Fund (“CalHDF”) submits the attached public comment regarding agenda item 5 for the November 25, 2024 Dana Point Planning Commission meeting, ZTA24-0001, proposed amendments to the City’s ADU ordinance.

Sincerely,

James M. Lloyd  
Director of Planning and Investigations  
California Housing Defense Fund  
[james@calhdf.org](mailto:james@calhdf.org)



**Nov 25, 2024**

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**Re:** Proposed Amendments to Dana Point's ADU Ordinance

Dear Dana Point Planning Commission,

The California Housing Defense Fund ("CalHDF") submits this letter regarding agenda item 5 for the November 25, 2024 City of Dana Point ("the City") Planning Commission meeting, ZTA24-0001, proposed amendments to the City's ADU ordinance.

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

### **Background**

The law gives local governments authority to enact zoning ordinances that implement a variety of development standards on ADUs. (Gov. Code, § 66314.) The standards in these local ordinances are limited by state law so as not to overly restrict ADU development. (See *id.*) Separately from local ADU ordinances, Gov. Code, § 66323 prescribes a narrower set of ADU types for which it imposes a ministerial duty on cities to approve. "Notwithstanding Sections 66314 to 66322 ... a local agency shall ministerially approve" these types of ADUs. (*Id.* at subd. (a).) This means that ADUs that satisfy the minimal requirements of section 66323 must be approved regardless of any contrary provisions of the local ADU ordinance. (*Ibid.*) SB 1211, effective 1 January 2025, makes this even more explicit: Gov. Code, § 66323, subdivision (b): "A local agency shall not impose any objective development or design standard that is not authorized by this section upon any accessory dwelling unit that meets the requirements of any of paragraphs (1) to (4), inclusive, of subdivision (a)."

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

State law also prohibits creating regulations on ADU development not explicitly allowed by state law. Government Code Section 66315 states, “No additional standards, other than those provided in Section 66314, shall be used or imposed, including an owner-occupant requirement, except that a local agency may require that the property may be used for rentals of terms 30 days or longer.”

## **Approval Process**

### **Impermissible ADU Permit Requirement**

DPC section 9.07.210(D) imposes an ADU permit requirement on all ADU applications. However, Government Code, section 66323, subdivision (a) requires approval of a certain class of ADUs with only a building permit, not an ADU permit (emphasis added): “Notwithstanding Sections 66314 to 66322, inclusive, a local agency shall ministerially approve an application for a **building permit** within a residential or mixed-use zone to create any of the following ... “

### **The City Must Return Exhaustive Written Comments**

DPC Section 9.07.210(D)(4) states that the Community Development Director will ministerially approve or disapprove an ADU application within 60 days. However, for disapproved applications, state law requires the City to return a full set of written comments to the applicant that fully describe the deficiencies in the application:

Government Code Section 66320, subd.(b): “If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit pursuant to subdivision (a), the permitting agency shall, within the time period described in subdivision (a), return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.

### **The City May Not Require Site Development Permits**

Finally, DPC Section 9.07.210(H) creates a discretionary site development permit process for ADUs that exceed the standards in the code. However, the City may not require site development permits for ADUs, or allow for such a process, as it is heard by the Planning Commission and constitutes a discretionary approval. Discretionary approvals are forbidden for all ADUs under state law. (Gov. Code, §§ 66316 and 66317.)

DPC Section 9.07.210(F)(1)(c) requires a site development permit for ADUs constructed on properties with non-conforming zoning conditions in certain areas of the city. In addition to the impermissibility of a site development permit, discussed *supra*, Government Code Section 66322, subd. (b) forbids the denial of an ADU application due to nonconforming zoning conditions: “The local agency shall not deny an application for a permit to create an accessory dwelling unit due to the correction of nonconforming zoning conditions ...”

DPC Section 9.07.210(F)(1)(d) empowers City staff to force ADUs into the discretionary site development permit process based on “issues related to adequacy of water or sewer services, and/or the impact of the proposed ADU on traffic flow, or public safety.” In addition to the impermissibility of a site development permit, state law only permits the imposition of objective standards on ADUs. (Gov. Code, § 66314.) This open-ended code section is a clear violation of the state requirement for objective standards, given that it means that the City can identify any “traffic flow” issues or a similar, vague, alleged problem and force an application into a discretionary process. (See *ibid.*)

### **Impermissible Permit Revocation Authority**

DPC Section 9.07.210(D)(5)(a) states “Subject to Government Code section 66331, an Accessory Dwelling Permit may be revoked if the Accessory Dwelling Unit violates one or more requirements of this section, or any other applicable portions of the Dana Point Municipal Code that are not in conflict with State Law.” DPC Section 9.07.215(C)(5) contains similar provisions but applicable only to JADUs.

However, the City may not revoke an ADU or JADU permit simply for violating other parts of the code. For instance, other parts of the DPC may impose more restrictive parking or setback standards, but the City may not revoke a permit simply because the ADU does not comply with those standards. Additionally, the City generally cannot revoke permits *ex post facto* for structures legally constructed under zoning, unless it condemns the structure and pays just compensation pursuant to the 5th Amendment.

Additionally, the City is misrepresenting the provisions of Government Code section 66331; this section of state law allows an owner of ADU to delay enforcement of building code by the City. This is not a grant of authority to the city to revoke an ADU permit.

### **Impermissible Delays Based on Other Permits**

DPC Section 9.07.210(G) forbids the issuance of ADU and JADU permits if their development triggers another permit required pursuant to the local code, until such a time as the additional permit is granted. However, Government Code Section 66316 only allows for ministerial approvals for ADUs and Government Code Section 66335, subd. (a)(1) only allows for ministerial approvals for JADUs. The only circumstance in which it is acceptable for the

City to delay action on the ADU or JADU permit is when the permit application is submitted with a permit application to create a new single or multifamily dwelling on the lot. (Gov. Code, § 66317, subd. (a).)

## **Impermissible Development Standards**

### **Impermissible Foundation Requirement**

DPC Section 9.07.210(F)(7)(A) mandates that detached ADUs be developed on a permanent foundation. However, the authority to mandate a permanent foundation is not found in Government Code 66314, and Government Code Section 66315 forbids local agencies from imposing additional local requirements: “Section 66314 establishes the maximum standards that a local agency shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in Section 66314, shall be used or imposed ... ” In addition, ADUs that fall within the bounds of Section 66323 must be approved regardless of additional local standards such as this.

### **JADUs Equally Entitled to 150 Square Foot Expansion Allowance**

DPC Section 9.07.210(e)(1)(B) only allows expansions of an existing accessory structure up to 150 square feet for ingress/egress for ADUs. State law mandates that cities allow this 150 square foot allowance for JADUs as well. (*Id.* at subd. (a)(1(A)).)

### **Impermissible Size Limitation on Attached ADUs**

DPC Section 9.07.210(E)(1)(h) imposes size limits on attached ADUs, which in the City’s definition includes ADUs converted from within space contained in the primary residence or an accessory structure. However, ADUs that meet the requirements of Gov. Code Section 66323, subd. (a) may not be subject to any size limitation. For instance, this means that a 1,300 square foot garage could be entirely converted into an ADUs, notwithstanding the size of the primary residence.

### **Impermissible Limitation on Roof Decks**

DPC Section 9.07.210(F)(7)(H) forbids roof decks and balconies above or upon an ADU. However, because Government Code Section 66314 does not specify that roof decks or balconies may be restricted by a local agency, the City therefore may not limit roof decks or balconies constructed in conjunction with ADUs. (Gov. Code, § 66315.)

### **Impermissible Parking Requirements**

DPC Section 9.07.210(E)(1)(j) subjects attached ADUs built on lots containing a single family home to parking requirements. However, ADUs that qualify for the protections of Government Code, section 66323, subd. (a)(1) may not be subject to any parking requirements, as discussed in the background section of this letter, *supra*.

DPC Section 9.07.210(E)(2)(h) subjects new construction, detached ADUs built on lots containing a single family home to parking requirements. However, ADUs that qualify for the protections of Government Code, section 66323, subd. (a)(2) may not be subject to any parking requirements, as discussed in the background section of this letter, *supra*.

DPC Section 9.07.210(E)(3)(h) subjects attached ADUs built on lots containing a multifamily dwelling to parking requirements. However, ADUs that qualify for the protections of Government Code, section 66323, subd. (a)(1) may not be subject to any parking requirements, as discussed in the background section of this letter, *supra*.

DPC Section 9.07.210(E)(4)(h) subjects new construction, detached ADUs built on lots containing a single family home to parking requirements. However, ADUs that qualify for the protections of Government Code, section 66323, subd. (a)(2) may not be subject to any parking requirements, as discussed in the background section of this letter, *supra*.

Additionally, DPC Section 9.07.210(F)(8)(c) states “The parking space(s) for the ADU shall be in addition to the parking required for the primary residential dwelling unit.” However, Government Code section 66314, subdivision (d)(11) states, “When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.” The City therefore must allow parking garages/structures/carports to be converted into ADUs without requiring replacement parking for the primary dwelling or existing multifamily units.

### **Impermissible Location Requirements**

DPC sections 9.07.210(E)(1)(i), 9.07.210(E)(2)(g), 9.07.210(E)(3)(g), and 9.07.210(E)(4)(g) subject ADUs to location requirements. However, other than the coastal development permit, none of these standards can be imposed on ADUs that qualify for the protections of Government Code, section 66323, subdivision (a).

### **The City Has Impermissible Limitations on Historic Sites**

Section 9.07.210(F)(7)(g) states that an ADU “shall not cause a substantial adverse change on any real property that is listed in the National Register of Historic Places, and/or California Register of Historic Places, and/or the City of Dana Point Historic Architectural Resources Inventory.” However, state law (Gov. Code, § 66314, subd. (b)(1)) only permits consideration of impacts on state register-listed properties, and it does not permit consideration of National Register-listed sites or locally designated landmarks.

Furthermore, this code section cannot be imposed on ADUs that qualify for the protections of Government Code, section 66323, subdivision (a). This means that DPC sections 9.07.210(E)(1)(k), 9.07.210(E)(2)(i), 9.07.210(E)(3)(i), and 9.07.210(E)(4)(i) must be amended or deleted.

### **Impermissible Firewall Requirement**

DPC Section 9.07.210(E)(3)(c), requires firewalls for attached ADUs built in conjunction with multifamily dwellings. However, Government Code Section 66314 does not allow the City to impose such a fire wall requirement. This would unlawfully increase the development costs for the conversion of an attached garage, for example. State building code already requires fire walls in some circumstances but not others, and state ADU law does not allow the City to impose a more stringent building code only for ADUs. In addition, ADUs that fall within the scope of Section 66323 are immune from superfluous local requirements such as this one.

### **The City May Not Limit the Size of ADUs on Multifamily Properties**

DPC Sections 9.07.210(E)(3)(f) and 9.07.210(E)(4)(d) limit the size of ADUs built on multifamily properties. These requirements are not permitted by Government Code Section 66323, subds. (a)(3) and (a)(4), which do not allow for any such size requirement.

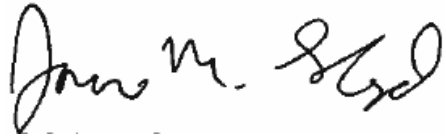


CalHDF is a 501(c)3 non-profit corporation whose mission includes advocating for increased access to housing for Californians at all income levels, including low-income households. You may learn more about CalHDF at [www.calhdf.org](http://www.calhdf.org).

Sincerely,

A handwritten signature in blue ink, appearing to read "Dylan Casey", written over a circular stamp.

Dylan Casey  
CalHDF Executive Director

A handwritten signature in black ink, appearing to read "James M. Lloyd". The signature is written in a cursive, flowing style.

James M. Lloyd  
CalHDF Director of Planning and Investigations