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August 13, 2025

Kelly Reenders, Assistant City Manager
City of Dana Point
Community Development Department
33282 Golden Lantern
Dana Point, CA 92629

Dear Kelly Reenders:

RE: City of Dana Point Non-Compliant Ordinance Under State Accessory Dwelling Unit (ADU) Law – Second Notice of Violation and Corrective Action Letter

The California Department of Housing and Community Development (HCD) is aware that the City of Dana Point (City) recently adopted Ordinance No. 25-04 which amends its previous ADU ordinance, Ordinance No. 23-06. HCD hereby notifies the City that its failure to adopt an amended ordinance that complies with State ADU Law is a violation of Government Code section 66326, subdivision (b)(2). In addition, the City's failure to utilize State ADU Law in place of its non-compliant ordinance is a violation of Government Code sections 66325 and 66316.

In addition, HCD hereby issues its written findings that the City has failed to implement programs 1.3 (Accessory Dwelling Units) and 3.8 (Accessory Dwelling Unit Ordinance) in its adopted 6th cycle housing element. HCD must review any action or failure to act by a city that it determines to be inconsistent with an adopted housing element or Government Code section 65583 generally, and it must issue written findings to the city accordingly.[1] If the City fails to demonstrate that the programs have been implemented, then HCD may revoke its findings that the City's housing element substantially complies with Housing Element Law.[2]

Additionally, HCD may notify the California Office of the Attorney General when a city takes actions that are inconsistent with an adopted housing element, Housing Element Law, or State ADU Law.[3]

[1] Gov. Code, § 65585, subd. (i)(1).
[2] Gov. Code, § 65585, subd. (i)(1)(C).
[3] Gov. Code, § 65585, subds. (j), (j)(15).

Background

Since January 2023, HCD has reviewed multiple iterations of the City's ADU ordinance. HCD has not found any of these ordinances to be compliant with State ADU Law. To date, HCD has reviewed the following ADU ordinances and resolutions from the City:

- Ordinance No. 21-06, for which HCD sent a Findings Letter to the City on January 13, 2023.
- Ordinance No. 23-06 and Resolution No. 23-06-20-01, for which HCD sent a Findings Letter to the City on June 28, 2024.
- Resolution No. 24-09-03-04, adopted on September 3, 2024, in which the City asserts that Ordinance No. 23-06 is compliant with State ADU Law, despite HCD's findings to the contrary.
- HCD sent a Notice of Violation to the City regarding its non-compliant Ordinance on December 10, 2024.
- HCD has now reviewed the City's most recent ADU ordinance, Ordinance No. 25-04, which is still non-compliant with State ADU Law, along with Resolution No. 25-02-04-01.

Analysis and Findings

Despite repeated notice through HCD's prior communications, violations of State ADU Law persist in Ordinance No. 25-04. To the extent that the City attempted to justify those violations in Resolution No. 25-02-04-01, HCD finds the City's justifications to be erroneous and unpersuasive. The City has also repeatedly declined to apply State ADU Law to individual ADU applications submitted while its ordinance remains noncompliant. Adopting a noncompliant amended ordinance while refusing to process ADU applications under State ADU law constitutes "tak[ing] an action in violation of" State ADU Law under Government Code section 65585, subdivision (j)(15). Accordingly, HCD is notifying the City that it is in violation of state law. Furthermore, HCD may notify the Attorney General of these violations pursuant to Government Code section 65585, subdivision (j).

HCD reaffirms the findings provided in the December 10, 2024, Notice of Violation, and finds Ordinance No. 25-04 to be non-compliant with State ADU Law. The City made some attempts to remedy the findings in question; however, out of the 12 findings previously made by HCD, eight remain.[4] As a result, the most recent ordinance does not comply with State ADU Law as described below.

A portion of Dana Point is in the coastal zone and the remainder is inland of the coastal

[4] The eight findings from the December 10, 2024, Notice of Violation which were not adequately addressed are Findings 1, 2, 4, 5, 7, 9, 11 and 12. This Second Notice of Violation has some instances of multiple findings relating to one finding in the December 10, 2024 Notice of Violation because it is written to distinguish separate issues as much as reasonably possible.

zone.[5] Government Code section 66329 states: "Nothing in this article shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units." Therefore, within the coastal zone, provisions of a fully certified Local Coastal Program (LCP) that conflict with State ADU law supersede the relevant provisions in State ADU Law.[6] However, the City still has a duty to follow State ADU Law, and jurisdictions are "encouraged to update their LCP's to comply" with State ADU Law.[7] Therefore, while corrections to the following findings of inconsistency with State ADU Law are mandatory for the City's ordinance, HCD recognizes that some of the ordinance's provisions may be superseded by the City's LCP in areas within the coastal zone. If, in the course of updating the City's LCP, there are provisions that would diverge from State ADU Law standards, those provisions should be clearly labeled as only applying within the coastal zone, pursuant to the California Coastal Act.

Prior Findings Not Properly Addressed

1. Section 6 – *Severability Clause*[8] – The Ordinance states: "If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance." However, Government Code section 66316 states: "If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this article, **that ordinance shall be null and void** and that agency shall thereafter apply the standards established in this article for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this article" (emphasis added). Therefore, the severability clause in the Ordinance conflicts with the phrase, "that ordinance shall be null and void" in the statute. The City must amend the Ordinance to delete the severability clause. Ordinance No. 25-04 is null and void, due to the violations described in this Notice, and the City must apply the standards in State ADU Law instead of Ordinance No. 25-04, until it adopts a valid ADU ordinance.

    - Correction[9]: ~~If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance.~~

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[5] California Coastal Commission, Critical Coastal Areas Map Viewer and Google Maps.
[6] California Coastal Commission, Updates Regarding the Implementation of New ADU Laws (January 21, 2022), available at https://www.hcd.ca.gov/sites/default/files/docs/policy-and-research/adu-memo.pdf.
[7] Id.
[8] This issue is raised in the December 10, 2024, Notice of Violation, page 2.
[9] Correction notes below each finding indicate language HCD would find compliant with State ADU Law in the absence of other amendments that alter the context. Deletions are indicated in ~~red strikeout~~ and additions are indicated in *blue italics*.

2. Section 9.07.210.B.5 – *Definition: Accessory Structure*[10] - The Ordinance states: "The term 'existing accessory structure' shall mean an accessory structure for which construction was completed on or before January 1, 2020." However, State ADU Law does not qualify an accessory structure as existing based on whether it was built before January 1, 2020. This definition differs from the statutory definition in Government Code section 66313, subdivision (b). The City must amend the Ordinance to incorporate the statutory definition, which is not qualified based on the date the structure was built.

    - Correction: The term 'existing accessory structure' shall mean ~~an accessory structure for which construction was completed on or before January 1, 2020.~~ *a structure that is accessory and incidental to a dwelling located on the same lot, which exists on the date an accessory dwelling unit or junior accessory dwelling unit application is submitted.*

3. Section 9.07.210.B.6 – *Definition: Existing Dwelling Units*[11] - The Ordinance states: "The term 'existing dwelling units' shall mean a dwelling unit for which construction was completed, and could be legally occupied, on or before January 1, 2020." However, State ADU Law does not qualify a dwelling unit as existing based on whether it was built before January 1, 2020. The City must amend the Ordinance to remove the date in the definition.

    - Correction: The term 'existing dwelling units' shall mean a dwelling unit ~~for which construction was completed, and could be legally occupied, on or before January 1, 2020.~~ *which exists on the date an accessory dwelling unit or junior accessory dwelling unit application is submitted.*

4. Section 9.07.210.B.7 – *Definition: Existing Multi-family Dwelling*[12] - The Ordinance states: "The term 'existing multi-family dwelling' shall mean a multi-family dwelling for which construction was completed in such a manner that all of the dwelling units could be legally occupied on or before January 1, 2020." However, State ADU Law does not qualify a multifamily dwelling as existing based on whether it was built before January 1, 2020. The City must amend the Ordinance to remove the date in the definition.

    - Correction: The term 'existing multi-family dwelling' shall mean a multi-family dwelling ~~for which construction was completed in such a manner that all of the dwelling units could be legally occupied on or before January 1, 2020.~~ *which exists on the date an accessory dwelling unit application is submitted.*

[10] This issue is raised in the June 28, 2024, Findings Letter, page 2 (Finding 2), and December 10, 2024, Notice of Violation, page 19 (Finding 12).
[11] This issue is raised in the June 28, 2024, Findings Letter, page 3 (Finding 4), and December 10, 2024, Notice of Violation, page 19 (Finding 12).
[12] This issue is raised in the June 28, 2024, Findings Letter, page 3 (Finding 4), and December 10, 2024, Notice of Violation, page 19 (Finding 12).

5. Section 9.07.210.C.1 – *Local Development Standards*[13] - The Ordinance states: "Any construction, establishment, alteration, enlargement, or modification of an Accessory Dwelling Unit shall comply with the requirements of this Section, the underlying development standards in the zoning district in which the lot is located, as well as any applicable overlay district, and the City's Building and Construction Codes as set forth in Title 8, **unless specifically preempted by or in conflict with State ADU Law**" (emphasis added). However, this passage fails to specifically acknowledge the major limitations State ADU Law places on local development standards and thus purports to grant the City excessive latitude to interpret where such conflicts exist. The City should amend the Ordinance to acknowledge the major areas where State ADU Law preempts local development standards.

    - Correction: Any construction, establishment, alteration, enlargement, or modification of an Accessory Dwelling Unit shall comply with the requirements of this Section, the underlying *objective* development standards in the zoning district in which the lot is located, as well as any applicable overlay district, and the City's Building and Construction Codes as set forth in Title 8, unless ~~specifically~~ preempted by or in conflict with State ADU Law, *including but not limited to Government Code sections 66314, 66321, and 66323.*

6. Section 9.07.210.C.3 – *Permitting Unpermitted ADUs*[14] - The Ordinance states: "Subject to Government Code Section 66332, the provisions of this section shall in no way validate any existing illegal Accessory Dwelling Unit." However, Government Code section 66332 requires the City to follow certain procedures and apply certain standards when reviewing an application for an unpermitted ADU or JADU built before January 1, 2020. While ADUs and JADUs require permits, the City should amend the Ordinance to clearly acknowledge its obligation to review applications for ADUs and JADUs built without the required permits.

    - Correction: ~~Subject to Government Code Section 66332, the provisions of this section shall in no way validate any existing illegal Accessory Dwelling Unit.~~ *An application to legalize an ADU or JADU built without the required permits prior to January 1, 2020, shall be reviewed pursuant to Government Code section 66332.*

7. Section 9.07.210.D.2 – *Application Completeness: ADUs*[15] - The Ordinance states: "An application for an ADU Permit will be deemed complete once all information required by the application form has been submitted to the Community Development Department, including all required fees, **and all**

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[13] This issue is raised in the January 13, 2023, Findings Letter, page 1; June 28, 2024, Findings Letter, page 4 (Finding 6); and December 10, 2024, Notice of Violation, page 12 (Finding 5).
[14] This issue is raised in the June 28, 2024, Findings Letter, page 3 (Finding 4).
[15] This issue is raised in the January 13, 2023, Findings Letter, page 9; June 28, 2024, Findings Letter, page 11 (Finding 24); and December 10, 2024, Notice of Violation, page 12 (Finding 5).

changes required to building permit plans submitted to the Community Development Department have been made, as confirmed by the Director" (emphasis added). Here the Ordinance confuses completeness review with compliance review. Under the Permit Streamlining Act, completeness review is limited to whether the applicant has submitted all items on the application checklist.[16] Completeness review precedes compliance review, which is the review phase where the City determines whether a complete application complies with all applicable development standards. The City must amend its ordinance to properly distinguish between completeness and compliance reviews.

- Correction: An application for an ADU Permit will be deemed complete once all information required by the application form has been submitted to the Community Development Department, including all required fees, ~~and all changes required to building permit plans submitted to the Community Development Department have been made,~~ as confirmed by the Director.

8. Section 9.07.210.D.5 – *Permit Revocation: ADUs*[17] - The Ordinance states: "Subject to Government Code Section 66331, an Accessory Dwelling Unit Permit may be revoked if the Accessory Dwelling Unit violates one or more requirements of this Section, or any other applicable provisions of the Dana Point Municipal Code that are not in conflict with State Law." The Ordinance further provides for a hearing and an appeal process but does not provide an opportunity to cure the violation before the decision to revoke the permit is made. However, Government Code section 66311 expresses the legislative intent that requirements in ADU ordinances do not "unreasonably restrict" the ability to create ADUs. Moving to revocation of an ADU permit without first giving the owner notice and a reasonable time to cure is unreasonably restrictive. The City must amend the Ordinance to provide written notice of the violation and a reasonable amount of time to correct the violation before the permit is revoked.

   - Correction: Subject to Government Code Section 66331, an Accessory Dwelling Unit Permit may be revoked if the Accessory Dwelling Unit violates one or more requirements of this Section, or any other applicable provisions of the Dana Point Municipal Code that are not in conflict with State Law. *[Add language providing for written notice of the violation and reasonable time to correct the violation before the decision to revoke is made.]*

9. Several of the following findings address provisions of paragraphs E or F of section 9.07.210. Paragraph E pertains to ADUs approved pursuant to Government Code section 66323 ("66323 units") and paragraph F pertains to ADUs approved pursuant to Government Code section 66314 and other relevant

[16] Gov. Code, § 65943, subd. (a).
[17] This issue is raised in the January 13, 2023, Findings Letter, page 2, and June 28, 2024, Findings Letter, page 11 (Finding 24).

sections of Article 2 of State ADU Law[18] ("non-66323 units"). Government Code section 66323, subdivision (b) states: "A local agency shall not impose any objective development or design standard that is not authorized by this section upon any accessory dwelling unit that meets the requirements of any of paragraphs (1) to (4), inclusive, of subdivision (a)." In some cases, the City could resolve HCD's findings by relocating provisions of the Ordinance from paragraph E to paragraph F, so that development standards that the statute prohibits for 66323 units are only applied to non-66323 units.

10. Section 9.07.210.E – *Unit Mixture*[19] - The Ordinance states: "Only one of the following shall be permitted per lot." It then proceeds to list four categories of ADUs in paragraphs 1 through 4. These categories correspond to the categories described in paragraphs (1) through (4) of subdivision (a) of Government Code section 66323: (1) a single-family conversion ADU and JADU, (2) a single-family detached ADU, (3) multifamily conversion ADUs and (4) ADUs detached from a multifamily dwelling. However, Government Code section 66323, subdivision (a) requires the local agency to permit "any" of those types of ADUs on a qualifying property, not just "one" type. This means, on a lot with an existing or proposed single-family dwelling, the City must allow one conversion ADU, one detached ADU, and one JADU.[20] The City must also allow multifamily conversion ADUs and ADUs detached from a multifamily dwelling on a lot with an existing multifamily dwelling.[21] The City must amend the Ordinance accordingly.

    - Correction: ~~Only one~~ *Any* of the following shall be permitted per *qualifying* lot. *The units described in paragraphs 1 and 2 may be combined on a lot with an existing or proposed single-family dwelling. The units described in paragraphs 3 and 4 may be combined on a lot with an existing multifamily dwelling. If there are both single-family and multifamily dwellings, existing or proposed, on a lot, paragraphs 1 and 2 are not applicable to that lot.*

11. Section 9.07.210.E.1.f – *Owner Occupancy*[22] - The Ordinance states: "The ADU or JADU shall be subject to the sale and rental requirements contained in Section 9.07.210(F)(2) and 9.07.215(D)(1)." However, section 9.07.215(D)(1) contains an owner-occupancy requirement. While this requirement is appropriate to apply to a JADU, it is not permitted for an ADU.[23] The City must amend the Ordinance to remove owner-occupancy requirements for ADUs.

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[18] Article 2 of Chapter 13 of Division 1 of Title 7 of the Government Code, commencing with section 66314.
[19] This issue is raised in the January 13, 2023, Findings Letter, page 1; June 28, 2024, Findings Letter, page 4 (Finding 7); and December 10, 2024, Notice of Violation, page 17 (Finding 9).
[20] As described in Gov. Code, § 66323, subds. (a)(1) and (a)(2).
[21] As described in Gov. Code, § 66323, subds. (a)(3) and (a)(4).
[22] This issue is raised in the June 28, 2024, Findings Letter, page 7 (Finding 14).
[23] Gov. Code, §§ 66315; 66333, subd. (b). There is a narrow exception to the prohibition on ADU owner occupancy requirements for ADUs sold at an affordable housing cost to a qualified buyer pursuant to Gov. Code, § 66341, subd. (c)(3).

- Correction: The ADU or JADU shall be subject to the sale and rental requirements contained in Section 9.07.210(F)(2) and 9.07.215(D)(1), *except that an ADU shall not be subject to the owner-occupancy requirement in Section 9.07.215(D)(1) unless it is sold or conveyed pursuant to Government Code section 66341.*

12. Section 9.07.210.E.1.h – *Total Floor Area: Attached ADUs*[24] - The Ordinance states: "The total floor area of the attached ADU may be either (i) up to 50 percent of an existing primary dwelling's total living area, or (ii) 850 square feet if it contains one bedroom or less, or (iii) 1,000 square feet if it contains more than one bedroom, whichever is smaller. Notwithstanding the foregoing, an applicant shall be able to construct an attached ADU that is at least 800 square feet." However, this standard is not applicable to 66323 units, because it is not contained or referenced in Government Code section 66323.[25]

    - Correction: *[Relocate the standard to paragraph F so that it does not apply to 66323 units]*

13. Section 9.07.210.E.1.j – *Parking*[26] - The Ordinance states, in the context of single-family conversion ADUs: "The ADU and existing development shall comply with the parking requirements set forth in Section 9.07.210(F)(8) below." However, parking requirements do not apply to ADUs approved pursuant to Government Code section 66323 because "[a] local agency shall not impose any objective development or design standard that is not authorized by this section [66323] upon any accessory dwelling unit that meets the requirements of any of paragraphs (1) to (4), inclusive, of subdivision (a)."[27] The City must amend the Ordinance to delete this requirement from paragraph E, which applies to 66323 units, or else move this requirement to paragraph F, which applies to non-66323 units.

    - Correction: ~~The ADU and existing development shall comply with the parking requirements set forth in Section 9.07.210(F)(8) below.~~

14. Section 9.07.210.E.2.h – *Parking*[28] - The Ordinance states, in the context of single-family detached ADUs: "The ADU and existing development shall comply with the parking requirements set forth in 9.07.210(F)(8) below." However, parking requirements do not apply to ADUs approved pursuant to Government Code section 66323 because "[a] local agency shall not impose any objective development or design standard that is not authorized by this section [66323] upon any accessory dwelling unit that meets the requirements of any of paragraphs (1) to (4), inclusive, of subdivision (a)."[29] The City must amend the Ordinance to delete this requirement from paragraph E.

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[24] A similar issue is raised in the June 28, 2024, Findings Letter, page 5 (Finding 8).
[25] Gov. Code, §§ 66314, subd. (d)(4); 66321, subd. (b)(2); 66323, subd. (b).
[26] This issue is raised in the December 10, 2024, Notice of Violation, page 7 (Finding 1).
[27] Gov. Code, § 66323, subd. (b).
[28] This issue is raised in the June 28, 2024, Findings Letter, page 9 (Finding 18), and December 10, 2024, Notice of Violation, page 7 (Finding 1).
[29] Gov. Code, § 66323, subd. (b).

- Correction: ~~The ADU and existing development shall comply with the parking requirements set forth in Section 9.07.210(F)(8) below.~~

15. Section 9.07.210.E.3.c – *Objective Standards: Fire Walls*[30] - The Ordinance states, in the context of multifamily conversion ADUs: "In addition, ADUs that are attached to the primary dwelling shall contain a fire wall sufficient for fire retention." However, development standards on ADUs must be objective.[31] The standard is subjective because it does not define a "fire wall sufficient for fire retention." The standard is also redundant given that the California Building Standards Code (CBSC) already contains requirements related to wall construction and fire protection. Local amendments to the CBSC should be codified with the remainder of the City's building standards. The City must amend the Ordinance to clarify the fire wall requirement.

    - Correction: In addition, ADUs that are attached to the primary dwelling shall ~~contain a fire wall sufficient for fire retention.~~ *comply with section [cite the specific section number of the applicable building standard here] regarding fire-resistant construction.*

16. Section 9.07.210.E.3.f – *Total Floor Area: Multi-family Conversion ADUs*[32] - The Ordinance states, in the context of multifamily conversion ADUs: "The total floor area of the attached ADU may be either (i) up to 50 percent of an existing primary dwelling's total living area, or (ii) 850 square feet if it contains one bedroom or less, or (iii) 1,000 square feet if it contains more than one bedroom, whichever is smaller. Notwithstanding the foregoing, an applicant shall be able to construct an attached ADU that is at least 800 square feet." However, no floor area limits apply to multifamily conversion ADUs under Government Code section 66323, subdivision (a)(3) because "[a] local agency shall not impose any objective development or design standard that is not authorized by this section [66323] upon any accessory dwelling unit that meets the requirements of any of paragraphs (1) to (4), inclusive, of subdivision (a)."[33] For attached new construction ADUs approved pursuant to Government Code section 66314, the standard would be appropriate if relocated to paragraph F, so that it does not apply to 66323 units.[34] The City must amend the Ordinance accordingly.

    - Correction: *[Relocate the standard to paragraph F so that it does not apply to 66323 units.]*

17. Section 9.07.210.E.3.h – *Parking: Multi-family Conversion ADUs*[35] - The Ordinance states, in the context of multifamily conversion ADUs: "The ADU and

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[30] This issue is raised in the January 13, 2023, Findings Letter, page 4; June 28, 2024, Findings Letter, page 11 (Finding 24); and December 10, 2024, Notice of Violation, page A12 (Finding 11).
[31] Gov. Code, § 66314, subd. (b).
[32] A similar issue is raised in the January 13, 2023, Findings Letter, page 3; June 28, 2024, Findings Letter, page 5 (Finding 8); and December 10, 2024, Notice of Violation, page A2 (Finding 1).
[33] Gov. Code, § 66323, subd. (b).
[34] Gov. Code, § 66321, subd. (b)(2).
[35] This issue is raised in the December 10, 2024, Notice of Violation, page 7 (Finding 1).

existing development shall comply with the parking requirements set forth in Section 9.07.210(F)(8) below." However, parking requirements do not apply to ADUs approved pursuant to Government Code section 66323 because "[a] local agency shall not impose any objective development or design standard that is not authorized by this section [66323] upon any accessory dwelling unit that meets the requirements of any of paragraphs (1) to (4), inclusive, of subdivision (a)." [36] The City must amend the Ordinance to delete this requirement from paragraph E.

- Correction: ~~The ADU and existing development shall comply with the parking requirements set forth in Section 9.07.210(F)(8) below.~~

18. Section 9.07.210.E.3.i – *Objective Standards: 66323 ADUs*[37] - The Ordinance states: "The ADU shall be subject to the development standards set forth in Section 9.07.210(F)(7) below." However, ADUs approved pursuant to Government Code section 66323 are only subject to the standards stated or referenced in section 66323.[38] Additionally, Government Code section 66322, subdivision (a) contains parking exemptions applicable to non-66323 units. The City must amend the ordinance to delete this requirement from section E, which applies to 66323 units.

    - Correction: ~~The ADU shall be subject to the development standards set forth in Section 9.07.210(F)(7) below.~~

19. Section 9.07.210.E.4.d – *Total Floor Area: Multi-family Detached ADUs*[39] - The Ordinance states, in the context of ADUs detached from a multifamily dwelling: "The total floor area of the detached ADU shall not exceed 1200 square feet." However, no floor area limit is contained within or may be applied to an ADU approved pursuant to Government Code section 66323, subdivision (a)(4).[40] The City must amend the Ordinance to delete this requirement.

    - Correction: ~~The total floor area of the detached ADU shall not exceed 1200 square feet.~~

20. Section 9.07.210.E.4.h – *Parking: Multi-family Detached ADUs*[41] - The Ordinance states, in the context of ADUs detached from a multifamily dwelling: "The ADU and existing development shall comply with the parking requirements set forth in Section 9.07.210(F)(8) below." However, parking requirements do not apply to ADUs approved pursuant to Government Code section 66323 because "[a] local agency shall not impose any objective development or design standard that is not authorized by this section [66323] upon any accessory dwelling unit that meets the requirements of any of paragraphs (1) to (4), inclusive, of subdivision

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[36] Gov. Code, § 66323, subd. (b).
[37] This issue is raised in the December 10, 2024, Notice of Violation, page 7 (Finding 1).
[38] Gov. Code, § 66323, subd. (b).
[39] This issue is raised in the June 28, 2024, Findings Letter, page 5 (Finding 8), and December 10, 2024, Notice of Violation, page 7 (Finding 1).
[40] Gov. Code, § 66323, subd. (b).
[41] This issue is raised in the December 10, 2024, Notice of Violation, page 7 (Finding 1).

(a)."[42] The City must amend the ordinance to delete this standard from paragraph E so that it will not be applied to 66323 units.

- Correction: ~~The ADU and existing development shall comply with the parking requirements set forth in Section 9.07.210(F)(8) below.~~

21. Section 9.07.210.F.1.d – *Designated Areas: Objective Standards*[43] - The Ordinance states: "In addition to the foregoing, the City shall review each Accessory Dwelling Unit Permit Application for any other issues related to adequacy of water or sewer services, and/or the impact of the proposed ADU on traffic flow, or public safety. In the event that the City determines that there is inadequate water or sewer service, or the ADU would have an impact on traffic flow or public safety, the City may deny the Application." However, the Ordinance itself must designate areas where ADUs are permitted, as opposed to deferring such determinations to a case-by-case review process.[44] The City must amend the Ordinance to delete this process.

    - Correction: ~~In addition to the foregoing, the City shall review each Accessory Dwelling Unit Permit Application for any other issues related to adequacy of water or sewer services, and/or the impact of the proposed ADU on traffic flow, or public safety. In the event that the City determines that there is inadequate water or sewer service, or the ADU would have an impact on traffic flow or public safety, the City may deny the Application.~~

22. Section 9.07.210.F.4 – *Front Setbacks*[45] - The Ordinance states (emphasis added): "**All attached and detached ADUs shall strictly comply with at least a four (4) foot side setback and at least a four (4) foot rear yard setback. All ADUs must also strictly comply with the front yard setback requirement of the underlying zoning district in which it is located, unless the applicant can demonstrate that enforcement of the City's front yard setback requirements would preclude the construction of an ADU that is at least 800 square feet.** No portion of an attached or detached ADU, including but not limited to HVAC equipment, staircases, and patio covers, shall project into the required rear, side, or front yard setback. **No setback requirement shall be required for a legally existing detached accessory structure, which is converted into an ADU. However, the converted ADU must comply with all of the other requirements of this Section, including the size, height, building separation, parking and permitting requirements set forth herein."** However, State ADU Law provides: "No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a

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[42] Gov. Code, § 66323, subd. (b).
[43] This issue is raised in the June 28, 2024, Findings Letter, page 10 (Finding 20), and December 10, 2024, Notice of Violation, page 15 (Finding 7).
[44] Gov. Code, § 66314, subd. (a).
[45] This issue is raised in the January 13, 2023, Findings Letter, page 7; June 28, 2024, Findings Letter, page 4 (Finding 6); and December 10, 2024, Notice of Violation, page A2 (Finding 1).

setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure."[46] HCD notes that in practice, most conversion ADUs are 66323 units, and the provisions in paragraph F only apply to non-66323 units. The Ordinance also attempts to limit the "no setback" provision to detached accessory structures, whereas the statute protects both an "existing living area or accessory structure" from setback requirements. The City must amend the Ordinance to align setback requirements with State ADU Law.

- Correction: ~~All a~~*A*ttached and detached ADUs shall strictly comply with at least a four (4) foot side setback and at least a four (4) foot rear yard setback*, except no setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit*. All ADUs must also strictly comply with the front yard setback requirement of the underlying zoning district in which it is located, unless the applicant can demonstrate that enforcement of the City's front yard setback requirements would preclude the construction of an ADU that is at least 800 square feet.

- Correction: No setback ~~requirement~~ shall be required for a ~~legally existing~~ detached accessory structure, *or existing living area* which is converted into an ADU. However, the converted ADU must comply with all of the other *applicable* requirements of this Section, including the size, height, building separation, parking and permitting requirements set forth herein.

23. Section 9.07.210.F.4[47] – *Exemptions from development standards* - The ordinance states: "All ADUs must also strictly comply with the front yard setback requirement of the underlying zoning district in which it is located, unless the applicant can demonstrate that enforcement of the City's front yard setback requirements would preclude the construction of an ADU that is at least 800 square feet." However, the corresponding section of State ADU Law, Government Code section 66321, subdivision (b)(3), also lists several other review procedures and development standards that must be waived for non-66323 units,[48] in addition to front setbacks, if those standards would preclude an ADU of up to 800 square feet which is at least four feet from side and rear property lines. These include: "a zoning clearance or separate zoning review or any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot

[46] Gov. Code, § 66314, subd. (d)(7).
[47] This relates to and clarifies Finding 8 of the June 28, 2024, Findings Letter. This issue was also raised in the January 13, 2023, Findings Letter, page 7, and December 10, 2024, Notice of Violation, page A1 (Finding 1).
[48] 66323 units are also exempt from these development standards, but for a different reason, which is that development standards external to Government Code section 66323 cannot be applied to 66323 units (Gov. Code, § 66323, subd. (b)).

coverage, floor area ratio, open space."[49] The City's Ordinance is silent on the other review procedures and development standards which must be waived. Therefore, the City should amend the Ordinance to align with Government Code section 66321, subdivision (b)(3).

- Correction: *[Somewhere in Ordinance paragraph F, quote or reference all of the review procedures and development standards which must be waived pursuant to Government Code section 66321, subdivision (b)(3) for an ADU of up to 800 square feet.]*

24. Section 9.07.210.F.5.a – *Height and Second Stories: Detached ADUs and Accessory Structure ADUs*[50] - The Ordinance states: "All detached ADUs, and all ADUs attached to accessory structures shall be subject to a height limitation of sixteen (16) feet and shall be limited to one story." However, while State ADU Law allows the City to regulate ADU height within specified limits, it does not allow the City to prohibit a second story ADU if a second story would be feasible under the CBSC for the applicable height limit.[51] Subsequent paragraphs discuss exceptions to the 16-foot height limit. The City must amend the Ordinance to align with the height allowances in State ADU Law.

    - Correction: All detached ADUs, and all ADUs attached to accessory structures shall be subject to a height limitation of sixteen (16) feet, *except that the height limit is 18 feet for an ADU within ½ mile walking distance of a major transit stop or high quality transit corridor and 20 feet if necessary for the roof pitch of the ADU to match the roof pitch of the primary dwelling, and the height limit is 18 feet on a lot with a multifamily multistory dwelling. The ADU shall be entitled to the least restrictive height limit it qualifies for.* ~~and shall be limited to one story.~~

25. Section 9.07.210.F.5.b – *Height and Second Stories: Multi-family ADUs*[52] - The Ordinance states (emphasis added): "Notwithstanding the foregoing, (i) detached ADUs located upon **parcels zoned for Multi-Family Residential** and containing an existing or proposed multi-story, Multi-Family Residential Structure or (ii) detached ADUs located on lot with an existing or proposed single family or multifamily dwelling unit, and which are within one-half of one mile walking distance of a major transit stop or a high-quality transit corridor shall be subject to an eighteen (18) foot height limitation **and shall be limited to one story**. An additional two (2) feet of height may be permitted to accommodate a roof pitch that is aligned with the roof pitch for the primary dwelling." However, State ADU Law does not qualify this height allowance with the requirement that the property be zoned for multifamily residential use. While State ADU Law allows the City to regulate ADU height within specified limits, it does not allow the City to prohibit a second story ADU if a second story would be feasible under the CBSC for the

[49] Minimum lot size is also listed in the statute, but minimum lot sizes are not allowed for any ADU (Gov. Code, § 66314, subd. (b)(1)).
[50] This issue is raised in the June 28, 2024, Findings Letter, page 7 (Finding 15).
[51] Gov. Code, §§ 66315; 66321, subd. (b)(4).
[52] This issue is raised in the June 28, 2024, Findings Letter, page 7 (Finding 15).

applicable height limit. The City must amend the Ordinance to delete the requirement for multifamily residential zoning and the single-story height limit.

- Correction: Notwithstanding the foregoing, (i) detached ADUs ~~located upon parcels zoned for Multi-Family Residential and~~ containing an existing or proposed multi-story, Multi-Family Residential Structure or (ii) detached ADUs located on lot with an existing or proposed single family or multifamily dwelling unit, and which are within one-half of one mile walking distance of a major transit stop or a high-quality transit corridor shall be subject to an eighteen (18) foot height limitation ~~and shall be limited to one story~~. An additional two (2) feet of height may be permitted to accommodate a roof pitch that is aligned with the roof pitch for the primary dwelling.

26. Section 9.07.210.F.5.c – *Height: Attached Garage ADUs*[53] - The Ordinance states: "An ADU that is attached to a primary dwelling may be constructed above the dwelling's attached garage, **so long as the existing dwelling contains two stories and complies with all development standards applicable in underlying zoning district in which it is located**, including but not limited to height" (emphasis added). However, State ADU Law requires the City to allow the following height for an attached ADU: "A height of 25 feet or the height limitation in the local zoning ordinance that applies to the primary dwelling, whichever is lower, for an accessory dwelling unit that is attached to a primary dwelling. This subparagraph shall not require a local agency to allow an accessory dwelling unit to exceed two stories." The City must amend the Ordinance to align with State ADU Law's allowances for height.

    - Correction: An ADU that is attached to a primary dwelling may be ~~constructed above the dwelling's attached garage, so long as the existing dwelling contains two stories and complies with all development standards applicable in underlying zoning district in which it is located, including but not limited to height.~~ *built to a height of 25 feet or the height limit in the underlying zone which applies to the primary dwelling, whichever is lower. The ADU may include two stories or a second story, subject to the height limits in this paragraph.*

27. Section 9.07.210.F.6.a – *Size Limitations*[54] - The Ordinance states: "Subject to Section 9.07.210(F)(7)(b) below, if an attached ADU is proposed as part of an **existing or proposed** primary dwelling, the total floor area of the ADU shall not exceed fifty percent (50%) of the living area of the existing primary residence" (emphasis added). However, the statute applies this requirement only when there is an existing primary dwelling. The City must amend the Ordinance accordingly.

    - Correction: Subject to Section 9.07.210(F)(7)(b) below, if an attached ADU is proposed as part of an existing ~~or proposed~~ primary dwelling, the total floor area of the ADU shall not exceed fifty percent (50%) of the living area

[53] This issue is raised in the January 13, 2023, Findings Letter, page 3; June 28, 2024, Findings Letter, page 7 (Finding 15); and December 10, 2024, Notice of Violation, page 3.
[54] This issue is raised in the June 28, 2024, Findings Letter, page 5 (Finding 8).

of the existing primary residence. *However, in no case shall an attached, new construction ADU be limited to less than 800 square feet due to the application of this standard. In addition, conversion ADUs have no maximum floor area.*

28. Section 9.07.210.F.7.g – *Historical Resources*[55] - The Ordinance states: "In accordance with the California Environmental Quality Act (Pub. Res. Code §§ 21000, *et. seq*.), 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 ADU Law permits objective development standards to protect resources listed on the California Register of Historical Resources,[56] not resources that are listed on the National Register or a local register of historic resources, but not on the California Register. Also, CEQA does not apply to ministerial projects.[57] The City must amend the Ordinance to limit the scope of historic preservation regulations to comply with State ADU Law.

    - Correction: ~~In accordance with the California Environmental Quality Act (Pub. Res. Code §§ 21000, *et. seq*.), an~~ *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 *Historical Resources* ~~Historic Places, and/or the City of Dana Point Historic Architectural Resources Inventory~~. *[Cite the section of the Dana Point Municipal Code where a "substantial adverse change" is defined objectively, or if no such definition exists in the Code, add one here.]*

29. Section 9.07.210.F.8.c – *Non-conforming Zoning Conditions: Parking ADUs*[58] - The Ordinance states: "The parking space(s) for the ADU shall be in addition to the parking required for the primary residential dwelling unit(s)." However, State ADU Law prevents the City from requiring the correction of nonconforming zoning conditions that do not present a threat to public health and safety and are not affected by the construction of the ADU.[59] The City should be aware of this distinction and apply its ordinance in a way that conforms to state law. In addition, the City should consider amending the Ordinance to note that this exception applies.

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[55] This issue is raised in the January 13, 2023, Findings Letter, page 8, and June 28, 2024, Findings Letter, page 11 (Finding 24).
[56] Gov. Code, § 66314, subd. (b)(1). A broader set of historic preservation standards is authorized by Government Code section 66323, subdivision (g), but only for local agencies that "adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures." HCD has no such ordinance on file from Dana Point.
[57] Pub. Res. Code, § 21080, subd. (b)(1).
[58] A similar issue was raised in the January 13, 2023, Findings Letter, page 6, and the same issue was raised in the June 28, 2024, Findings Letter, page 6, (finding 12), and December 10, 2024, Notice of Violation, page 7 (Finding 1).
[59] Gov. Code, §§ 66322, subd. (b); 66323, subd. (c).

- Correction: The parking space(s) for the ADU shall be in addition to the parking required for the primary residential dwelling unit(s). *However, if the existing off-street parking area of the primary dwelling is nonconforming, an ADU application is not required to make the primary dwelling conforming.*

30. Section 9.07.210.H.1 – *Side and Rear Setbacks*[60] - The Ordinance states: "However, in no case shall an ADU: 1. Be constructed less than 4-feet from the side or rear property lines." This provision conflicts with Government Code section 66314, subdivision (d)(7), which states: "No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit." The City must amend the Ordinance to incorporate the exception.

    - Correction: However, in no case shall an ADU: 1. Be constructed less than 4-feet from the side or rear property lines~~.~~*, except that no setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit.*

31. Section 9.07.210.H.2 – *Height: Underlying Zoning*[61] - The Ordinance states: "However, in no case shall an ADU: 2. Exceed the maximum building height of the zoning district." However, this conflicts with Government Code section 66321, subdivision (b)(4), which requires the local agency to allow certain ADU heights regardless of the underlying zoning regulations. The City must amend the Ordinance to incorporate the exception.

    - Correction: However, in no case shall an ADU: 2. Exceed the maximum building height of the zoning district~~.~~*, except as provided by Government Code section 66321, subdivision (b)(4).*

32. Section 9.07.210.H.3 – *Maximum Size*[62] - The Ordinance states: "However, in no case shall an ADU: 3. Include living area larger than 1,200 square feet." However, ADUs approved pursuant to Government Code section 66323, subdivisions (a)(1), (a)(3), and (a)(4) are not subject to maximum floor areas. The City must amend the Ordinance to incorporate the exceptions.

    - Correction: However, in no case shall an ADU: 3. Include living area larger than 1,200 square feet~~.~~*, except for the single-family conversion, multifamily conversion and detached from multifamily accessory dwelling units permitted pursuant to Government Code section 66323, subdivisions (a)(1), (a)(3), and (a)(4).*

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[60] This issue is raised in the January 13, 2023, Findings Letter, page 7; June 28, 2024, Findings Letter, page 11 (Finding 24); and December 10, 2024, Notice of Violation, page A1 (Finding 1).
[61] This issue is raised in the June 28, 2024, Findings Letter, page 7 (Finding 15).
[62] This issue is raised in the December 10, 2024, Notice of Violation, page 7 (Finding 1).

33. Section 9.07.215.B.1 – *Underlying Development Standards: JADUs*[63] - The Ordinance states: "Any construction, establishment, alteration, enlargement, or modification of a Junior Accessory Dwelling Unit shall comply with the requirements of this Section, the underlying development standards in the zoning district, as well as any applicable overlay district in which the lot is located, and the City's Building and Construction Codes as set forth in Title 8." However, development standards in the underlying zone or overlay zone only apply to JADUs to the extent that they are objective and do not conflict with State JADU Law.[64] The City should amend the ordinance to note the supremacy of State JADU Law in this respect.

    - Correction: Any construction, establishment, alteration, enlargement, or modification of a Junior Accessory Dwelling Unit shall comply with the requirements of this Section, the *objective* underlying development standards in the zoning district, as well as any applicable overlay district in which the lot is located, and the City's Building and Construction Codes as set forth in Title 8~~.~~*, to the extent that they are not in conflict with Government Code sections 66333 through 66339*.

34. Section 9.07.215.B.3 – *Permitting Unpermitted JADUs*[65] - The Ordinance states: "An application may be made pursuant to this Section to convert an illegal Junior Accessory Dwelling Unit to a legal conforming Junior Accessory Dwelling Unit and shall be subject to the same standards and requirements as for a newly proposed Accessory Dwelling Unit." However, Government Code section 66332 establishes special procedures and standards for reviewing a JADU built without permits prior to January 1, 2020. The City must amend the ordinance to incorporate the exception.

    - Correction: An application may be made pursuant to this Section to convert an illegal Junior Accessory Dwelling Unit to a legal conforming Junior Accessory Dwelling Unit, and shall be subject to the same standards and requirements as for a newly proposed Accessory Dwelling Unit~~.~~*, except as provided by Government Code section 66332.*

35. Section 9.07.215.C.2 – *Application Completeness: JADUs*[66] - The Ordinance states: "An application for a JADU Permit will be deemed complete once all information required by the application form has been submitted to the Community Development Department, including all required fees, **and all changes required to building permit plans** submitted to the Community Development Department have been made, subject to the confirmation of the

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[63] A similar issue was raised in the January 13, 2023, Findings Letter, page 1; June 28, 2024, Findings Letter, page 11 (Finding 24); and December 10, 2024, Notice of Violation, page 7 (Finding 1).
[64] Gov. Code, §§ 66333-66339.
[65] This issue is raised in the June 28, 2024, Findings Letter, page 3 (Finding 4), and December 10, 2024, Notice of Violation, page A13 (Finding 12).
[66] This issue is raised in the January 13, 2023, Findings Letter, page 9; June 28, 2024 Findings Letter, page 11, (Finding 24); and December 10, 2024, Notice of Violation, page 12 (Finding 5).

Director" (emphasis added). Here the Ordinance confuses completeness review with compliance review. Under the Permit Streamlining Act, completeness review is limited to whether the applicant has submitted all items on the application checklist.[67] Completeness review precedes compliance review, which is the review phase where the City determines whether a complete application complies with all applicable development standards. The City must amend its ordinance to properly distinguish between completeness and compliance reviews.

- Correction: An application for a JADU Permit will be deemed complete once all information required by the application form has been submitted to the Community Development Department, including all required fees, ~~and all changes required to building permit plans submitted to the Community Development Department have been made,~~ subject to the confirmation of the Director.

36. Section 9.07.215.C.5 – *Permit Revocation: JADUs*[68] - The Ordinance states: "The Building Official or his or her designee may revoke a Junior Accessory Dwelling Unit Permit if the Junior Accessory Dwelling Unit violates one or more requirements of this chapter." The Ordinance further provides for a hearing and an appeal process but does not provide an opportunity to cure the violation before the decision to revoke the permit is made. However, Government Code section 66311 expresses the legislative intent that requirements in ADU ordinances do not "unreasonably restrict" the ability to create ADUs. Moving to revocation of a JADU permit without first giving the owner notice and a reasonable time to cure is unreasonably restrictive. The City must amend the Ordinance to provide written notice of the violation and a reasonable amount of time to correct the violation before the permit is revoked.

    - Correction: The Building Official or his or her designee may revoke a Junior Accessory Dwelling Unit Permit if the Junior Accessory Dwelling Unit violates one or more requirements of this chapter. *[Add language providing for written notice of the violation and reasonable time to correct the violation before the decision to revoke is made.]*

37. Section 9.07.215.D.2.a – *Unit Mixture*[69] - The Ordinance states: "Pursuant to Government Code 66310 et. seq., 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 9.07.210." However, Government Code section 66323, subdivision (a) requires a local agency to permit one conversion ADU, one JADU, **and** one detached ADU. The City must amend the Ordinance to incorporate the allowable combination of units.

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[67] Gov. Code, § 65943, subd. (a).
[68] This issue is raised in the January 13, 2023, Findings Letter, page 2, and June 28, 2024 Findings Letter, page 11 (Finding 24).
[69] This issue is raised in the January 13, 2023, Findings Letter, page 1; June 28, 2024, Findings Letter, page 4 (Finding 7); and December 10, 2024, Notice of Violation, page 17 (Finding 9).

- Correction: Pursuant to Government Code 66310 et. seq., in addition to the one (1) Junior Accessory Dwelling Unit allowed in this Section, an applicant may also construct one (1) attached ~~or~~ *and one* detached ADU ~~allowed~~ so long as ~~it~~ *those ADUs* ~~complies~~ *comply* with the requirements of Section 9.07.210.

38. Section 9.07.215.D.3.c – *Non-conforming Zoning Conditions: Parking: JADUs*[70] - The Ordinance states: "No JADU shall be constructed in any dwelling that is non-conforming with respect to parking, or driveway length." However, "A local agency shall not deny an application for a permit to create a junior accessory dwelling unit pursuant to this article due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and that are not affected by the construction of the junior accessory dwelling unit."[71] Please also note that statute provides, "A junior accessory dwelling unit ordinance adopted pursuant to Section 66333 shall not require additional parking as a condition to grant a permit."[72] The City must amend the ordinance to refrain from requiring off-street parking or correction of nonconforming driveway lengths in connection with a JADU application.

    - Correction: ~~No JADU shall be constructed in any dwelling that is non-conforming with respect to parking, or driveway length.~~

39. Section 9.07.215.D.3.g c – *Fire Walls JADUs*[73] - The Ordinance states: "All JADUs must meet the requirements of all Uniform Codes, including but not limited to the California Building Code and the California Fire Code, as such codes have been adopted and amended by Title 8 of the City of Dana Point Municipal Code. In addition, JADUs shall contain a fire wall sufficient for fire retention." However, the statute provides: "For purposes of any fire or life protection ordinance or regulation, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit."[74] The City must amend the Ordinance to incorporate the exception.

    - Correction: All JADUs must meet the requirements of all Uniform Codes, including but not limited to the California Building Code and the California Fire Code, as such codes have been adopted and amended by Title 8 of the City of Dana Point Municipal Code~~.~~*, except that for purposes of any fire or life protection ordinance or regulation, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit.* ~~In addition, JADUs shall contain a fire wall sufficient for fire retention.~~

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[70] This issue is raised in the June 28, 2024, Findings Letter, pages 6 and 11 (Findings 12 and 23), and December 10, 2024, Notice of Violation, page 18 (Finding 11).
[71] Gov. Code, § 66336.
[72] Gov. Code, § 66334, subd. (a).
[73] This issue is raised in the January 13, 2023, Findings Letter, page 4; June 28, 2024, Findings Letter, page 11 (Finding 24); and December 10, 2024, Notice of Violation, page 18 (Finding 11).
[74] Gov. Code, § 66337, subd. (a).

40. Section 9.07.215.D.4 – *Parking: JADUs*[75] - The Ordinance states: "No additional parking shall be required for a JADU, other than that which is required for the primary residence." However, the statute provides: "A junior accessory dwelling unit ordinance adopted pursuant to Section 66333 shall not require additional parking as a condition to grant a permit."[76] This includes a prohibition on replacement parking if the JADU is formed by a garage conversion. The City must amend the Ordinance to delete the requirement quoted.

    - Correction: No additional parking shall be required for a JADU~~, other than that which is required for the primary residence~~.

New Findings

Additionally, HCD has found that there are new issues in Ordinance No. 25-04 which are also violations of State ADU Law. The following findings reflect those items:

1. Section 9.07.210.B.9 – *Definition: Living Area* - The Ordinance states: "The term 'living area' shall mean the interior habitable area of the primary dwelling unit, including basements and attics, but not including garages or accessory spaces, consistent with Government Code 66313(e)." However, Government Code section 66313, subdivision (e) defines the term "living area" differently. The City must amend the Ordinance to incorporate the statutory definition of "living area."

    - Correction: The term 'living area' shall mean the interior habitable area of ~~the primary~~ *a* dwelling unit, including basements and attics, but not including garages or accessory ~~spaces~~ *structures*, consistent with Government Code 66313(e).

2. Section 9.07.210.B.10 – *Definitions: Total Floor Area ADUs and JADUs* - The Ordinance states: "The term 'total floor area' shall mean the total floor area of the ADU, inclusive of all habitable areas and non-habitable areas of the structure, including but not limited to stairways, hallways, basements, attics, garages, storage areas, restrooms, and any other accessory spaces, consistent with Dana Point Zoning Code section 9.75.060." However, this definition is inappropriate to apply to ADUs and JADUs because it does not align with the statutory definitions of an ADU or a JADU.[77] The City must amend the Ordinance so that the floor area limits that are applied to ADUs and JADUs do not include the floor area of a garage attached to an ADU or a JADU or the floor area of non-habitable basements and attics, or other unspecified areas that cannot reasonably be considered part of an ADU or a JADU.

    - Correction: The term 'total floor area' shall mean the total floor area of the ADU *or JADU*, ~~inclusive of all habitable areas and non-habitable areas of the structure,~~ including ~~but not limited to~~ *spaces for living, sleeping, eating cooking, and sanitation,* stairways, hallways, *habitable* basements *and*

[75] This issue is raised in the December 10, 2024, Notice of Violation, page 18 (Finding 11).
[76] Gov. Code, § 66334, subd. (a).
[77] Gov. Code, § 66313, subds. (a), (d).

attics, ~~*garages*,~~ *and* storage areas~~,~~. ~~restrooms., and any other accessory spaces, consistent with Dana Point Zoning Code section 9.75.060.~~

3. Section 9.07.210.F.2 – *Separate Sale; ADUs* - The Ordinance states: "An ADU shall not be sold separately from the primary dwelling unit unless the sale complies with State Law, including but not limited to Government Code 66340 *et. seq*., and the Subdivision Map Act." This implies that the City is exercising its authority to permit ADUs to be sold separately as condominium units pursuant to Government Code section 66342. Allowing this practice is optional. However, ordinances implementing section 66342 should explicitly state their intent to do so. Allowing ADUs to be sold separately if they meet the requirements of Government Code section 66341 is mandated by the statute, and the Ordinance correctly implies the City will do so.

    - Correction (optional): If the City intends to allow ADUs to be sold separately as condominiums pursuant to Government Code section 66342, amend the Ordinance to state that explicitly.

5. Section 9.07.210.F.7.d – *Manufactured Homes: Building and Fire Code* - The Ordinance states: "All ADUs must meet the requirements of all Uniform Codes, including but not limited to the California Building Code and the California Fire Code, as such codes have been adopted and amended by Title 8 of the City of Dana Point Municipal Code." While it is correct that most ADUs must comply with the CBSC, as it may be locally amended, this is not the case for manufactured homes that are used as ADUs. Manufactured homes must comply with a separate set of federal building standards instead.[78] The City must amend the Ordinance to incorporate the exception.

    - Correction: All ADUs*, except for manufactured homes,* must meet the requirements of all Uniform Codes, including but not limited to the California Building Code and the California Fire Code, as such codes have been adopted and amended by Title 8 of the City of Dana Point Municipal Code.

6. Section 9.07.210.F.7.f – *Manufactured Homes: Energy Code* - The Ordinance states: "All ADUs shall comply with the California Energy Code." While it is true that most ADUs must comply with the California Energy Code, as it may be locally amended, this is not the case for manufactured homes that are used as ADUs. Manufactured homes must comply with a separate set of federal building standards instead.[79] The City must amend the Ordinance to incorporate the exception.

    - Correction: All ADUs*, except for manufactured homes,* shall comply with the California Energy Code.

7. Section 9.07.210.F.8 – *Correction: Missing Referenced Section* - The Ordinance states: "Except as provided in Section 9.07.210(F)(9)(e)-(f) below, as part of the

[78] Gov. Code, § 66313, subd. (a)(2); Health & Saf. Code § 18007. Title 24, Code of Federal Regulations, Subtitle B, Chapter XX, Part 3280 et seq.
[79] Id.

ADU Permit Application, the Applicant must demonstrate that the proposed ADU meets all of the following parking standards: […].” However, the ordinance does not contain a paragraph (F)(9). The reference appears to be intended for (F)(8)(e)-(f). The City should amend the Ordinance to correct the reference.

- Correction: Except as provided in Section 9.07.210(F)~~(9)~~*(8)*(e)-(f) below, as part of the ADU Permit Application, the Applicant must demonstrate that the proposed ADU meets all of the following parking standards: […].

8. Section 9.07.210.F.8.a – *Parking: Efficiency Units* - The Ordinance states: “At least one (1) off-street parking space shall be provided per ADU.” However, State ADU Law provides: “Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less.”[80] Efficiency dwelling units do not have a separate bedroom, because they have a living room that shares living, sleeping, dining and cooking functions, and are thus not required to have off-street parking. The City must amend the Ordinance to incorporate this exception.

   - Correction: At least one (1) off-street parking space shall be provided per ADU*, except for an efficiency unit, which is not required to provide off-street parking*.

9. Section 9.07.215.C.4.c – *Fees: JADUs* - The Ordinance states: “Except as otherwise provided in this section, the construction of a Junior Accessory Dwelling Unit shall be subject to any applicable fees adopted pursuant to the requirements of Government Code, Title 7, Division 1, Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).” However, Government Code section 66338, subdivision (a) states: “For purposes of providing service for water, sewer, or power, including a connection fee, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit.” The City must amend the Ordinance to incorporate this exception.

   - Correction: Except as otherwise provided in this section the construction of a Junior Accessory Dwelling Unit shall be subject to any applicable fees adopted pursuant to the requirements of Government Code, Title 7, Division 1, Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012). *However, a Junior Accessory Dwelling Unit shall not be considered a separate or new dwelling unit for purposes of providing service for water, sewer, or power, including a connection fee.*

10. Section 9.07.215.D.1 – *Owner Occupancy: JADUs* - The Ordinance states: “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” (emphasis added). State JADU Law does require owner-occupancy of a JADU or the remainder of the single-family residence, with the exceptions noted. However, it does not require owner occupancy “at all times.” A JADU ordinance may not prohibit the property owner from leaving the property for reasonable purposes. The City should amend the Ordinance regarding owner occupancy.

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[80] Gov. Code, § 66314, subd. (d)(10)(A).

- Correction: 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,~~ *the primary residence of the property owner,* unless the property is owned by a government agency, land trust, or housing organization.

Housing Element Law

HCD certified the City's 6th Cycle Housing Element on October 20, 2022. HCD must review any action or failure to act by a city that it determines to be inconsistent with an adopted housing element or Government Code section 65583 generally, and it must issue written findings to the city accordingly.[81] HCD must give the City a reasonable time, no longer than 30 days, to respond to these findings.[82]

If HCD does not receive a written response from the City by September 12, 2025, or the response does not demonstrate that the program actions have been implemented, then HCD may revoke its findings that the City's housing element substantially complies with Housing Element Law.[83] Additionally, HCD may notify the California Office of the Attorney General when a City takes actions that are inconsistent with an adopted housing element or Government Code section 65583, among other laws.[84]

Findings

To accommodate the Regional Housing Needs Allocation (RHNA), the City relies on the potential for 81 ADUs within the planning period, approximately 10 units per year. The Housing Element includes programs 1.3 and 3.8, which both deal with updating the City's ADU ordinance.[85] Program 1.3 commits the City to update the ADU ordinance "as necessary in response to new state law." As part of Program 1.3, if the City falls below the expected trend of 10 units per year at any point during the planning period after 2023, the City must adjust its ADU projections accordingly and rezone as necessary to ensure that the Housing Element continues to provide adequate sites to accommodate the City's RHNA.

Annual Progress Report data shows that the City permitted 16 ADUs in 2021, 3 in 2022, 6 in 2023 and 6 in 2024. Thus, the City has been permitting ADUs at a rate below the expected trend of ten per year since 2022.[86] ADUs account for a significant share of the

[81] Gov. Code, § 65585, subd. (i)(1).
[82] Gov. Code, § 65585, subd. (i)(1)(A).
[83] Gov. Code, § 65585, subd. (i)(1)(C).
[84] Gov. Code, § 65585, subd. (j).
[85] Dana Point 6th Cycle Certified Housing Element, pages H-169 and H-179.
[86] The figure for 2021 was higher than ten, but the City's planning period for the 6th Cycle runs from October 15, 2021 to October 15, 2029, meaning only the ADUs permitted after October 15, 2021 may be credited to the 6th Cycle.

City's strategy to meet its RHNA, about 15 percent.[87] ADUs also play a significant role in satisfying the City's RHNA for low- and moderate-income households, since the City anticipates that all ADUs permitted during the 6th Cycle will be affordable at either the extremely low-, very low-, low-, or moderate-income levels. Program 3.8 states: "Based on guidance provided by HCD, the City will update its ADU Ordinance to maintain consistency with state law and submit the revised adopted ordinance to HCD for review within 60 days of adoption." Yet, despite this commitment, HCD has found violations of State ADU Law in Ordinance No. 25-04 that, despite previous correspondence, the City has not corrected.

The City must amend the ordinance pursuant to the findings in this Notice and must amend its housing element to account for the fact that ADU permitting levels have been below the projection in the housing element.

SB 9 Potential Violation

In HCD's April 17, 2023 letter, HCD also addressed issues with the City's Senate Bill (SB) 9 (Chapter 162, Statutes of 2021) ordinance. On May 16, 2023, the City responded to HCD's letter stating that that the City had "dedicated our staff and resources toward updating our Accessory Dwelling Unit (ADU) Ordinance, which is the City's priority as detailed in our commitment to HCD in our letter dated February 13, 2023." Additionally, the letter stated that the City anticipated having something that would go to the Council in October 2023 but was hoping to get a copy of Orange County Council of Governments' model ordinance to do so. On October 27, 2023, HCD emailed the City to inquire about the status of the update. On November 3, 2023, the City replied and stated that they had not yet updated the Ordinance as they were unable to get the Orange County Council of Governments' model ordinance until September but were working on updating their Housing Element and Local Coastal Program with the California Coastal Commission. When HCD recently inquired as to when the City anticipated having updates made to the Ordinance, the City did not respond. More than two years after HCD's first communication with the City about this ordinance, it still has not been updated to comply with SB 9.

Conclusion and Next Steps

HCD finds that the City has failed to adopt an ordinance that complies with Government Code sections 66310-66342. In addition, the City has demonstrated that it is not applying the standards in State ADU Law until it adopts an ordinance that complies with the law.[88] Together, this constitutes an action taken in violation of State ADU Law under Government Code section 65585, subdivision (j).

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[87] Dana Point 6th Cycle Certified Housing Element, page H-195. Dana Point's RHNA is 530 units, of which the City expects 81 to be ADUs.
[88] Gov. Code, §§ 66325, 66316.

In addition, HCD finds that the City has failed to implement programs 1.3 and 3.8 in its housing element. Finally, the City has failed to address HCD's previous findings regarding its SB 9 ordinance.

The City has until September 12, 2025 to respond to this Notice of Violation and Corrective Action Letter in writing with a plan of action to remedy the violations of State ADU Law, address HCD's previous findings regarding the City's SB 9 ordinance, and implement its housing element programs. HCD will review and consider the City's written response before taking any action authorized by Government Code section 65585, subdivisions (i) and (j), which could include revoking HCD's finding that the City's housing element is in substantial compliance with Housing Element Law and/or referral to the California Office of the Attorney General.[89]

If you have any questions or would like to discuss the contents of this letter, please contact David Barboza at david.barboza@hcd.ca.gov.

Sincerely,



David Zisser
Assistant Deputy Director
Local Government Relations and Accountability

[89] Gov. Code, §§ 65585, subds. (i)(1)(C), (j)(15); 66326.