

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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April 5, 2023

Brenda Wisneski, Community Development Director
Community Development Department
City of Dana Point
33282 Golden Lantern
Dana Point, CA 92629

Dear Brenda Wisneski:

RE: City of Dana Point's Accessory Dwelling Unit Ordinance – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) thanks the City of Dana Point (City) for its response to HCD's January 13, 2023 written findings ("findings letter") of non-compliance. On February 13, 2023, the City sent a written response, signed by Principal Planner Belinda Deines, to HCD's written findings. HCD appreciates the letter's stated commitment to amend the City's accessory dwelling unit (ADU) ordinance and looks forward to reviewing the amended ordinance for compliance with State ADU Law upon its adoption.

However, on February 8 and February 16, 2023, HCD contacted the City regarding an ADU applicant's complaint against the City. The complaint in question arose over the City's denial of an ADU application due to the primary dwelling unit possessing a nonconforming zoning condition. HCD acknowledged that such a denial would be in violation of Government Code section 65852.2, subdivision (d)(2), which states, "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, building code violations, or unpermitted structures that do not present a threat to public health and safety and are not affected by the construction of the accessory dwelling unit."

This issue would be resolved with the City approving ADU applications in compliance with state law. Community Development Director Brenda Wisneski replied¹ in an email on February 16, 2023 to say that staff anticipates having a new ordinance adopted in May of 2023. It appears that the City intends to wait for the City Council amendments to pass before processing the ADU application. The purpose of this letter is to provide the

¹ It should here be noted that, prior to mailing the January 13 findings letter, HCD received numerous complaints about the City's noncompliance with State ADU Law. While it is beyond the scope of this letter to enumerate the complaints, HCD is concerned that the City's first response to a complaint after sending the February 13 letter, does not indicate of an intent to comply with State ADU Law.

City technical assistance regarding its obligation to continue permitting ADUs according to State ADU Law even in the absence of a compliant ADU ordinance.

Refusing to process ADU permits would be unlawful and in violation of state law, including but not limited to State ADU Law (Gov. Code, §§ 65852.150, 65852.2, 65852.22) and the Housing Crisis Act (HCA) of 2019 (Gov. Code, § 66300).

State ADU Law

HCD's findings letter informed the City that its ordinance is noncompliant. While the City works on adopting a new ordinance, it remains obligated to process ADU applications per Government Code section 65852.2, subdivisions (a)(3)(A) and (b)(1), which require a permitting agency to "either approve or deny [an] application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application." Moreover, subdivision (a)(3)(A) states that "[i]f the local agency has not approved or denied the completed application within 60 days, the application shall be deemed approved."

In addition, the City, upon denying an ADU or JADU application, must provide "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" (Gov. Code, § 65852.2, subd. (b)(2)).

Notably, Government Code section 65852.2, subdivision (a)(7), states, "No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision." The absence of a compliant ordinance; therefore, cannot preclude the City from acting to approve or deny a permit to create an ADU.

Housing Crisis Act of 2019

This kind of delay may also constitute a violation of provisions of the HCA. The HCA prohibits a local government from "enact[ing] a development policy, standard, or condition" that would have the effect of "[c]hanging the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use or reducing the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district in effect at the time of the proposed change, below what was allowed under the land use designation or zoning ordinances ... in effect on January 1, 2018." (Gov. Code, § 66300, subd. (b)(1)(A).) The statute defines "reducing the intensity of land use" to include "any other action that would individually or cumulatively reduce the site's residential development capacity." (*Ibid.*)

Clearly, refusing to process ADU permits would have the effect of reducing the residential development capacity of sites across the City, in violation of the HCA. The HCA also prohibits a local government from “[i]mposing a moratorium or similar restriction or limitation on housing development ... within all or a portion of the jurisdiction ... other than to specifically protect against an imminent threat to the health and safety of persons residing in, or within the immediate vicinity of, the area subject to the moratorium” (Gov. Code, § 66300, subd. (b)(1)(B)(i).) Moreover, the local government shall not enforce restrictions or limitations on a housing development until it has submitted their ADU ordinance to and have received approval from HCD. (Gov. Code, § 66300, subd. (b)(1)(B)(ii).) If HCD denies approval, “that ordinance shall be deemed void.” (*Ibid.*)

Conclusion

HCD would like to remind the City that HCD has enforcement authority of State ADU Law, the Housing Crisis Act, and other state housing laws. If HCD finds that a city’s actions do not comply with state law, HCD may notify the California Office of the Attorney General that the local government is in violation of state law (Gov. Code, § 65585, subd. (j)).

In summary, the City must continue processing ADU applications in compliance with state law. HCD will continue to monitor the City’s actions and inactions and will respond in order to remedy any violations.

HCD appreciates the City’s efforts in revising its ordinance and welcomes the opportunity to assist the City in fully complying with State ADU Law. Please contact Mike Van Gorder of our staff, at (916) 776-7541 or at mike.vangorder@hcd.ca.gov for more information.

Sincerely,

Jamie Candelaria

Jamie Candelaria
Senior Housing Accountability Manager

cc: Belinda Deines, Principal Planner