

CAPISTRANO BAY DISTRICT  
AGENDA REPORT  
November 13, 2018

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*New Business*

## ITEM 10a

### City Proposal Regarding the 'Ten Percent Rule'

The 'Ten Percent Rule' is the common term used in the Beach Road community for limiting the amount of ordinary remodeling a homeowner can perform in a non-conforming home. It basically limits a homeowner to 10% of the value of the structure, in any 12-month period, for improvements to the home.

If your home (not the land it sits on) has a valuation, for example, of \$100,000, then you would be permitted by the City to a remodel project of \$10,000. After 12 months you could obtain another permit to do an additional 10% of the value of the home, year after year. For anyone familiar with remodel projects, \$10,000 doesn't get you much of a project but the City is taking a new look at the application this 10% limit.

The 'Ten Percent Rule' is not going to change but what the City is proposing is a more fair and reasonable interpretation of how to apply the code. In a nutshell, the City is proposing a policy that would allow a homeowner to get a permit to perform up to 50% of the value of the home. Instead of doing 10% at a time over a period of years, you could now do 50% at one time. The only catch, of course, is that you would be prohibited from any additional improvements for five years, or for the amount of time consumed based on the project cost. For example, if your project was only \$30,000 then by this scenario, you'd only be prohibited from further projects for three years, assuming a structure valuation of \$100,000.

The Board has been discussing this proposal and generally feels it is a positive development for owners of non-conforming homes, but is currently examining the proposal for any veiled drawbacks or pitfalls.

*The following five pages make up the draft proposal by the City.*

Director Community of Development Interpretation  
Ordinary Alteration Agreement  
for Property Located in the  
Floodplain Overlay District of the Coastal Zone

ITEM NO. Da

Dana Point Municipal Code  
Title 9 ZONING  
Chapter 9.31 FLOODPLAIN OVERLAY DISTRICT

**9.31.050 Administration.**

(C)(3) The following regulations shall apply to nonconforming uses and structures located in Floodplain Overlay Districts in the coastal zone:

(A) No nonconforming use or structure shall be enlarged, expanded, reconstructed or structurally altered, with the limited exception of a one-time, ten percent (10%) square footage improvement that may be allowed on the inland side or within the sideyard setback areas of an existing residence, unless the entire structure is made to conform with the development standards contained in this Chapter (excepting the provisions contained in subsections (c)(1) and (c)(2) above). In addition, that work done in any period of twelve (12) months on ordinary alterations or replacement of walls, fixtures or plumbing not exceeding ten percent (10%) of the value of the building, as determined by the Director of Community Development, shall be permitted provided that the cubical contents of the building, as it existed at the time this subsection or amendments thereto take effect, are not increased.

**Background:**

Application of Dana Point Municipal Code (DPMC) Section 9.31.050(C)(3)(A) cited above has caused considerable confusion for Beach Road Property Owners and City staff over the years. More specifically the 10% value/12 month provision for "ordinary alterations" is not clearly articulated and is purposely open to interpretation, based on the inclusion of the "...as determined by the Director of Community Development" provision. Furthermore, City staff have noted an influx of Building Permit requests for non-conforming Beach Road properties to complete "ordinary alterations" to their homes. Typical alteration requests range from roofing and window replacement to bathroom and kitchen remodels. Based on the circumstances outlined above and to avoid confusion moving forward, the Community Development Director has provided the following written interpretation to help clarify application of DPMC Section 9.31.050(C)(3)(A) as they apply to "ordinary alterations"

**Interpretation:**

Ordinary Alteration:

For the purposes of DPMC Section 9.31.050(C)(3)(A) the term "ordinary alterations" shall mean all interior and exterior remodeling and or replacement work that does not enlarge or structurally alter the exterior walls of the existing structure or its foundation system.

**Director Community of Development Interpretation**  
*Ordinary Alteration Agreement*  
*for Property Located in the*  
*Floodplain Overlay District of the Coastal Zone*

Typical ordinary alterations may include kitchen and bathroom repair and or remodel; floor, window and door repair and or replacement; electrical and plumbing system repair and replacement; and roof repair and replacement.

Value:

For the purposes of determining the 10% improvement value limit of ordinary alterations, city staff shall utilize the City's current Building Department Valuation Table (attached).

1. The buildings overall value will be determined by multiplying the buildings existing square footage by the applicable value per square foot
  - a. 10% of the calculated overall value will establish the limit of ordinary alternations in any 12 month period. (see sample worksheet)

Scope of Work:

The scope of work for ordinary alterations of non-conforming Beach Road structures shall not exceed 50% the overall value of the structure or propose demolishing more than 50% of the existing structure. Ordinary alterations project's which scope of work exceeds the 10% value limit for any 12 month period may be permitted subject to a deed restriction alerting/prohibiting the property owner from completing/permitting additional ordinary alterations until the value limit for the previously permitted ordinary alterations has been exhausted See attached example.

RECORDING REQUESTED BY,  
AND WHEN RECORDED MAIL TO:

[Insert Owner Name and Address]  
Attention:

WITH A CONFORMED COPY TO:

City of Dana Point  
33282 Golden Lantern  
Dana Point, CA 92629  
Attention: Kathy Ward, City Clerk

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(Space above this line for Recorder's Use)

**ORDINARY ALTERATION AGREEMENT FOR PROPERTY LOCATED IN THE  
FLOODPLAIN OVERLAY DISTRICT OF THE COASTAL ZONE**

\_\_\_\_\_ (the "Owner"), owns the real property commonly referred to as 34XXX Beach Road (APN: XXX-XXX-XX) (the "Property") and has filed a verified Building Permit application (#####) with the City of Dana Point (the "City") on \_\_\_\_\_ to complete ordinary alterations to an existing nonconforming structure located in the Floodplain Overlay District of the Coastal Zone.

In accordance with Dana Point Municipal Code ("DPMC") Section 9.31.050(C)(3)(A), work done within any twelve (12) month period that is considered an ordinary alteration, such as a replacement of wall(s), fixture(s) or plumbing, which does not exceed ten percent (10%) of the value of the building, as determined by the Director of Community Development, shall be permitted. As set forth in Exhibit A, which is attached hereto and incorporated herein by reference, the Director of Community Development and/or his designee has reviewed the Building Permit application and determined as follows:

The value of the existing building is: \$ \_\_\_\_\_.

The value of the proposed ordinary alterations is: \$ \_\_\_\_\_.

Based on the valuation determination noted above and time limits provided in DPMC Section 9.31.050(C)(3)(A), the City agrees to issue a Building Permit for ordinary alterations at the Property with the following conditions:

1. The scope of work for ordinary alterations shall not exceed 50% the overall value of the building or structure.
2. The scope of work shall not result in the demolition of more than 50% of the existing structure.

3. The City will not issue any additional Building Permits for ordinary alterations until the value limit for the permitted ordinary alterations granted under Building Permit #####, which is the subject of this Agreement, has been exhausted, which has been determined to be a date no sooner than \_\_\_\_\_. (Exhibit A.) Notwithstanding the foregoing, the Director of Community Development, at his or her discretion, may issue a Building Permit for emergency repair work (including, but not limited to, broken water pipes, electrical failures, etc.) prior to \_\_\_\_\_ if deemed necessary to ensure the building remains habitable and safe from hazards.
4. The Owner hereby agrees to record this Agreement on the Property and provide evidence of such recordation prior to issuance of the Building Permit. In addition, Owner agrees to fully inform all future owners, successors, and assigns of the contents and substance of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above, and this Agreement shall be effective as of the date of its recordation in the Official Records.

CITY:

CITY OF DANA POINT,  
a municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

OWNER

[INSERT NAME]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



## CITY OF DANA POINT

COMMUNITY DEVELOPMENT  
PLANNING AND BUILDING & SAFETY  
33282 Golden Lantern, Suite 209  
Dana Point, CA 92629  
(949) 248-3564 | [www.danapoint.org](http://www.danapoint.org)

DATE: OCT 18, 2018

# VALUATION EXAMPLE

### IMPROVEMENT VALUE LIMIT

#### NON-CONFORMING STRUCTURE TO FP-3 OVERLAY DISTRICT

Pursuant 9.31.050 (C) All work done in any period of twelve (12) months on ordinary alterations or replacement of walls, fixtures or plumbing not exceeding ten percent (10%) of the value of the building as determined by The Director of Community Development, shall be permitted provided that the cubical contents of the building, as it existed at the time this subsection or amendments thereto take effect, are not increased.

SITE ADDRESS:	34XXX Beach Road		
APPLICANT:	John Doe	PHONE:	
OWNER:		PHONE:	

### EXISTING STRUCTURE

Description	Existing Area	Value	Total
Existing SFD	1600 SQFT.	195.94	\$313,504
Existing Garage	200 SQFT.	47.45	\$9,490
		<b>TOTAL</b>	<b>\$322,994</b>

### PROJECT VALUATION

Description	Area/Scope	Value	Total
Interior Remodel(Kitchen, Bath, Master Bedroom & Master Bath)	1350 SQFT.	\$117.62 per sq ft.	\$158,787
Exterior Finishes(siding) garage	100 SQFT.	\$1.25 per sq ft.	\$125
		<b>TOTAL</b>	<b>\$158,912</b>

### 10% IMPROVEMENT VALUE LIMITS

EXISTING STRUCTURE TOTAL VALUATION:		\$322,994
EXISTING STRUCTURE 10% VALUATION:		\$32,299.40
PROJECT VALUATION BY YEAR:		
Nov. 1, 2018 – Nov. 1, 2019		\$32,299.40
Nov. 1, 2019 – Nov. 1, 2020		\$32,299.40
Nov. 1, 2020 – Nov. 1, 2021		\$32,299.40
Nov. 1, 2021 – Nov. 1, 2022		\$32,299.40
Nov. 1, 2022 – Oct. 2, 2023		\$29,714.40
	TOTAL	\$158,912
	EFFECTIVE/PERMIT ISSUANCE DATE	Nov. 1, 2018 – Oct. 2, 2023