

**Supplemental
Communications
(Received before 12 pm
March 4, 2025)**

Supplemental Communication

From: Commission
Sent: Monday, March 3, 2025 1:02 PM
To: Planning Commission
Cc: Shen, Alisa; Horner, Justin; Sanford, David; Jacob, Melinda; Jacob, Melinda; Messner, Faye; Commission
Subject: FW: CalHDF comment re ADU ordinance for March 5, 2025 Planning Commission meeting
Attachments: Berkeley - ADU ordinance comment - PC 5 Mar 2025.pdf
Follow Up Flag: Follow up
Flag Status: Flagged

FYI

Thank you,

Neetu Salwan
Assistant City Clerk
Berkeley City Clerk Department
nsalwan@berkeleyca.gov
510.981.6916

From: City Clerk <clerk@berkeleyca.gov>
Sent: Monday, March 3, 2025 12:47 PM
To: Commission <Commission@berkeleyca.gov>
Subject: FW: CalHDF comment re ADU ordinance for March 5, 2025 Planning Commission meeting

Internal

Hi Commission,
Please see the email below.

From: James Lloyd <james@calhdf.org>
Sent: Monday, March 3, 2025 12:45 PM
To: Horner, Justin <JHorner@berkeleyca.gov>
Cc: City Attorney's Office <attorney@berkeleyca.gov>; Manager, C <CManager@berkeleyca.gov>; City Clerk <clerk@berkeleyca.gov>; Planning Dept. Mailbox <Planning@berkeleyca.gov>
Subject: CalHDF comment re ADU ordinance for March 5, 2025 Planning Commission meeting

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Dear Berkeley Planning Commission,

The California Housing Defense Fund (“CalHDF”) submits the attached public comment for the Planning Commission meeting of March 5, 2025 regarding item 11B, proposed amendments to the City’s regulations for ADUs and JADUs.

Sincerely,

James M. Lloyd
Director of Planning and Investigations
California Housing Defense Fund
james@calhdf.org



Mar 3, 2025

City of Berkeley
2180 Milvia St
Berkeley, CA 94704

Re: Proposed Amendments to City's ADU Ordinance

By email: jhorner@berkeleyca.gov

Cc: attorney@berkeleyca.gov; CManager@berkeleyca.gov; clerk@berkeleyca.gov; planning@berkeleyca.gov

Dear Berkeley Planning Commission,

The California Housing Defense Fund ("CalHDF") submits this letter as a public comment for the Planning Commission meeting of March 5, 2025 regarding item 11B, proposed amendments to the City's regulations for ADUs and JADUs.

The City's current ADU regulations fail to comply with state law in several ways, and the City should address these issues in any potential ADU ordinance.

Background

The law gives local governments authority to enact zoning ordinances that implement a variety of development standards on ADUs. (Gov. Code, § 66314.) The standards in these local ordinances are limited by state law so as not to overly restrict ADU development. (See *id.*) Separately from local ADU ordinances, Government Code section 66323 establishes a narrower set of ADU types that local governments have a ministerial duty to approve. "Notwithstanding Sections 66314 to 66322 ... a local agency shall ministerially approve" these types of ADUs. (*Id.* at subd. (a).) This means that ADUs that satisfy the minimal requirements of section 66323 must be approved regardless of any contrary provisions of the local ADU ordinance. (*Ibid.*) Local governments may not impose their own standards on such ADUs. (Gov. Code, § 66323, subd. (b) ["A local agency shall not impose any objective development or design standard that is not authorized by this section upon any accessory dwelling unit that meets the requirements of any of paragraphs (1) to (4), inclusive, of subdivision (a)."].)

2221 Broadway, PH1, Oakland, CA 94612
hi@calhdf.org

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

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

Impermissible Parking Requirements

City code Table 23.306-2 imposes the off-street parking requirements of code section 23.322.030 on ADUs. Table 23.322-1 imposes a parking requirement of one space per ADU in the Hillside Overlay unless the parcel is near public transit. (Of note, the state law references in code section 23.322.030 are out of date.)

However, as discussed *supra*, the City may not impose any development standards on ADUs eligible for the protections of Government Code section 66323, subdivision (a) beyond the height and setback requirements specified by state law. This means that the City may not impose any off-street parking requirements on such ADUs.

Page 20 of the January 2025 HCD ADU [Handbook](#) is instructive (emphasis added):

“What design, zoning, or other local standards can be imposed on 66323 Units?
A local agency may not impose development or design standards, including both local standards and standards found in State ADU Law, on 66323 Units that are not specifically listed in Government Code section 66323. (Gov. Code, § 66323, subds. (a), (b).) This includes, but is not limited to, **parking**, height, setbacks, or other zoning provisions (e.g., lot size, open space, floor area ratio, etc.).

The City should amend the code to eliminate this off-street parking requirement, as it is clearly forbidden by state law.

Impermissible Limit on ADUs on Existing Multifamily Properties

City code Table 23.306-1 limits multifamily properties to two detached ADUs per property. However, Government Code section 66323, subdivision (a)(4)(A)(ii) obligates the City to approve up to eight detached ADUs in conjunction with existing multifamily dwellings, provided that the number of such detached ADUs does not exceed the number of existing dwelling units on the parcel.

For more information on 66323 units, please see page 18 et seq. of the January 2025 HCD ADU [Handbook](#).

Impermissible Front Setback Requirements

City code § 23.306.030(A)(4) prohibits ADUs in the front setback, less certain exceptions if an ADU of 800 square feet is not otherwise developable. These regulations are reflected in City code Table 23.306-2.

However, Government Code section 66323, subdivision (a) does not permit imposition of front setback requirements for ADUs that qualify for the protections of that section of law. There are many policy reasons for this, regardless of whether or not it is possible to locate an ADU elsewhere on the property. For instance, a homeowner may prefer to preserve a private backyard space while redeveloping the less useful front yard. While children may play in the backyard, the front yard is closer to the street and less safe for a variety of activities. The City therefore must allow front yard ADUs that comply with the standards in Government Code section 66323, subdivision (a) both on single family and on multifamily properties.

HCD has issued guidance (the January 2025 HCD ADU [Handbook](#), page 18) affirming the duty of local agencies to allow ADUs protected by Government Code section 66323 in the front setback under all circumstances.

Impermissible Setback Requirements for 150 Square Foot Additions

City code section 23.306.030(A)(1) mandates that a 150 square foot addition to an existing structure for an ADU conversion comply with “maximum height and setback requirements.” It is unclear which setback requirements this section of code is referring to. However, assuming that it is referring to the requirements of the underlying zoning district, Government Code section 66323, subdivision (a)(1)(A) allows for a 150 square foot addition to conversion ADUs to facilitate ingress and egress. Furthermore, as discussed *supra*, Government Code section 66323 does not allow for the imposition of any underlying zoning standards. The City must allow such a 150 square foot expansion even if it is located within a setback area and must apply only the setbacks listed in section 66323 to ADUs that meet that code section’s requirements.

Impermissible Building to Building Separation Requirements

City code section 23.306.030(A)(7) establishes certain minimum building to building distances for ADUs. These regulations are reflected in City code Table 23.306-2.

While the City may regulate building to building separation for ADUs subject only to its local standards pursuant to Government Code section 66314, it may not regulate building to

building separation for ADUs eligible for the protections of Government Code section 66323, as discussed *supra*.

Impermissible Deed Restriction Requirement

City code section 23.306.040(C) requires an ADU applicant to place a deed restriction on the property as a condition of the application. This is a clear violation of Government Code section 66323, which prohibits any standards not explicitly authorized in that section. Deed restrictions are also not permitted by Government Code section 66315, which forbids standards not listed in section 66314, and it is unclear why the City would want applicants to go through the trouble of filing such a deed restriction, other than to discourage ADU development by increasing development cost.

The California Department of Housing and Community Development (“HCD”) has communicated that such deed restrictions are unlawful. The January 2025 HCD ADU [Handbook](#) specifically forbids deed restrictions as a condition of ADU development (see page 22).

Additionally, such deed restrictions imposed on ADUs (or on other accessory structures) are unenforceable. This is due to the absence of horizontal privity between the City and the applicant. In other words, since the City does not own the applicant’s property at the time of the application, and does not own a neighboring property to whose benefit the proposed restriction(s) redound, black letter property law bars the restrictions from binding future property owners. (See, e.g., *Scaringe v. J. C. C. Enters* (1988) 205 Cal.App.3d 1536 [describing the types of privity relationship between covenanting parties that allow enforcement of a deed restriction]; see also Civ. Code, §§ 1460 et seq.)



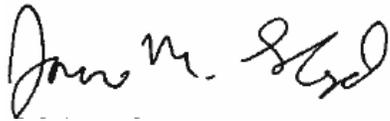
CalHDF appreciates the City’s effort to implement state law governing ADU construction. However, the City should amend its ordinance to ensure that it complies with state law.

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

Sincerely,



Dylan Casey
CalHDF Executive Director



James M. Lloyd
CalHDF Director of Planning and Investigations

Supplemental Communication

From: Office of the Director of Police Accountability
Sent: Monday, March 3, 2025 1:31 PM
To: Office of the Director of Police Accountability
Subject: Recap of Honoring Black Voices, Advancing Justice
Attachments: 2025-02-26 Visioning Session Informational Packet.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Community Members,

On February 26th, the Office of the Director of Police Accountability hosted a community visioning session, **Honoring Black Voices, Advancing Justice**. Community members were able to engage with Equity in **Policing Expert Carlton Mayers** and **City of Berkeley Diversity, Equity, and Inclusion Officer Rex Brown** on crucial topics such as the future of police accountability and public safety in Berkeley.

We have attached a [recording](#) for the event and an informational packet with details about the speakers and other important resources. We also encourage you to stay engaged with future events and initiatives as we continue to work together toward a more just and accountable community.

As we close out Black History Month, we're reminded of the importance of Black voices in shaping our progress. February honors their contributions, while also reminding us of the ongoing need to address systemic inequities, especially within policing and public safety. Our work at the ODPA remains focused on ensuring transparency, equity, and justice year-round, and we're grateful for your continued engagement in these efforts.

Thank you for your participation, and we look forward to your continued involvement.

In solidarity,

Office of the Director of Police Accountability
1900 Addison Street, 3rd Floor
Berkeley, CA 94704
(510) 981-4950

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Supplemental Communication

From: Jay Ess <jsopher@hotmail.com>
Sent: Thursday, February 27, 2025 2:55 PM
To: Planning Commission
Cc: Allison; Justin
Subject: Construction on Webster and Telegraph.
Attachments: View of construction.jpg; construction parking0.jpg

Follow Up Flag: Follow up
Flag Status: Flagged

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Hello members of the Planning Commission,

I need your help. I live at 2333 Webster Street, and have been sorely affected by the construction going on across my house.

I've been understanding of the needs of the construction crew, and have tried to work around them for all this time. However, as time goes on it seems that they are less and less concerned about the needs of the residents, and have taken over the entire block where I live. Half the block is sealed off, which I realize is right and proper. However, they use the rest of the block at will. On other days when the work load is light they regularly park in the middle of the street, because it makes it easy for them, although it is clear the exit of my car is blocked.

It could be possible for them to make better use of the sealed off section of the block to do their construction instead of taking over the rest of the block. I am trapped in my house during the day, as the attached photos show.

Please get them to find a better way to do their construction work which doesn't break the law and is conscious of the rights of others, and not take the easy way out. I need drive my car onto the street, for instance. It would be informative if someone on the planning commission would take a look.

I would appreciate your help in this matter.

Yours truly,
Joshua Sopher

Supplemental Communication

From: Jay Ess <jsopher@hotmail.com>
Sent: Monday, March 3, 2025 12:31 PM
To: Planning Commission
Subject: Blockage of Webster Street for March 3
Attachments: View of construction.jpg; construction parking0.jpg; Two trucks blocking Webster Street.jpg

Follow Up Flag: Follow up
Flag Status: Flagged

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Please take my emails into serious consideration. I have two trucks completely blocking the street where I live, today. I added a new photo. Friday was the same thing. It's a regular situation.

From: Jay Ess <jsopher@hotmail.com>
Sent: Thursday, February 27, 2025 2:55 PM
To: PlanningPC@berkeleyca.gov <PlanningPC@berkeleyca.gov>
Cc: Allison <Riemer@berkeleyca.gov>; Justin <Horne@berkeleyca.gov>
Subject: Construction on Webster and Telegraph.

Hello members of the Planning Commission,
I need your help. I live at 2333 Webster Street, and have been sorely affected by the construction going on across my house.
I've been understanding of the needs of the construction crew, and have tried to work around them for all this time. However, as time goes on it seems that they are less and less concerned about the needs of the residents, and have taken over the entire block where I live. Half the block is sealed off, which I realize is right and proper. However, they use the rest of the block at will. On other days when the work load is light they regularly park in the middle of the street, because it makes it easy for them, although it is clear the exit of my car is blocked.
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I would appreciate your help in this matter.
Yours truly,
Joshua Sopher