

**Supplemental
Correspondence
(Received before
12 pm July 15, 2025)**

Supplemental Correspondence

From: James Lloyd <james@calhdf.org>
Sent: Monday, July 14, 2025 3:30 PM
To: Messner, Faye
Cc: City Attorney's Office; Manager, C; City Clerk; Planning Dept. Mailbox; Shen, Alisa; Horner, Justin
Subject: public comment re item 10A for the 7/16/25 Planning Commission meeting
Attachments: Berkeley - ADU ordinance comment - PC - 16 July 2025.pdf

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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 July 14, 2025 regarding item 10A, 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
CalHDF is grant & donation funded
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Jul 14, 2025

City of Berkeley
2180 Milvia St
Berkeley, CA 94704

Re: Proposed Amendments to City's ADU Ordinance

By email: fmessner@berkeleyca.gov

Cc: attorney@berkeleyca.gov; CManager@berkeleyca.gov; clerk@berkeleyca.gov;
planning@berkeleyca.gov; ashen@berkeleyca.gov; jhorner@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 July 14, 2025 regarding item 10A, proposed amendments to the City's regulations for ADUs and JADUs. **CalHDF would like to thank the City for removing the parking requirement for section 66323 ADUs, as is required by state law.**

However, the City's proposed ADU regulations fail to comply with state law in several ways, and the City should address these issues before adopting the 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)."].)

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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 Permitting Requirements

City code 23.306.040(A) requires a Zoning Certificate for all ADUs or JADUs. However, this permitting step is forbidden by state law for ADUs that meet the standards of Government Code section 66323. From section 66323, subdivision (a): “Notwithstanding Sections 66314 to 66322, inclusive, a local agency shall ministerially approve **an application for a building permit ...**” This requirement was imposed by AB 3182 in 2020.

The City should amend its code to make clear that a Zoning Certificate is not required for ADUs and JADUs that meet the requirements of Government Code section 66323. Rather, the City must approve such ADUs and JADUs via a building permit application only.

Additionally, the City’s noticing requirements for ADU applications are illegal. City code 23.306.040(B)(3) requires applicants to pay for material cost, postage, and staff time to mail notices of an ADU application to “tenants of the subject property, and owners and tenants of the adjacent, confronting, and abutting properties, within ten working days of submission of the building permit application to the City.”

As discussed *supra*, Government Code section 66315 forbids the imposition of any standards not contained in Government Code 66314 on ADU development, and Government Code section 66323, subdivision (b) forbids imposition of any design or development standards beyond what is contained in section 66323. Reimbursing the City to notify neighbors is a “development standard,” and the City therefore may not impose it on ADU applications.

Furthermore, the public purpose of such noticing is unclear, when these are ministerial approvals and the public has no opportunity to provide input on an individual ADU or JADU project.

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 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): "A local agency cannot impose a deed restriction on an ADU."

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.)



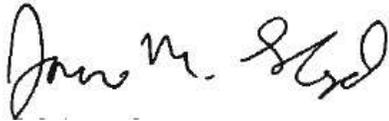
CalHDF appreciates the City's effort to implement state law governing ADU construction. However, the City should amend its ordinance to ensure that it complies with state law.

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,

A handwritten signature in blue ink, appearing to read 'Dylan Casey', with a long horizontal stroke extending to the right.

Dylan Casey
CalHDF Executive Director

A handwritten signature in black ink, appearing to read 'James M. Lloyd', with a long horizontal stroke extending to the right.

James M. Lloyd
CalHDF Director of Planning and Investigations