



**Feb 21, 2025**

**City of Fort Bragg**  
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**Re:** Proposed amendments to the City's Accessory Dwelling Unit and Junior Accessory Dwelling Unit Regulations

Dear Fort Bragg City Council,

The California Housing Defense Fund ("CalHDF") submits this letter as a public comment concerning item 7B on the agenda for the City Council meeting scheduled for February 24, 2025, an amendment to the City's regulations for ADUs and JADUs.

CalHDF would like to thank the City for removing the lot coverage requirement for multifamily ADUs and for 150 square foot expansions to existing accessory structures to facilitate ingress and egress for a conversion ADU. However, the proposed ordinance still fails to comply with state law in several ways, and the City should address these problems before approving 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

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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 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 Size Limitation on Conversion ADUs in Multifamily Buildings**

City code section 18.42.180(B)(2)(a) imposes size limits on ADUs converted from non-livable spaces within multifamily properties. Specifically, the code limits such ADUs to no more than 50% of the floor area of the median unit size in the multifamily project.

However, ADUs that meet the requirements of Government Code Section 66323, subdivision (a)(3) may not be subject to any size limitation. This is because, as discussed *supra*, this section of state law imposes upon the city a duty to approve the ADUs described in that section via a building permit only, without subjecting them to any of the potential standards listed in Sections 66314 to 66322. This means that the City may not impose this size restriction on such ADUs.

Furthermore, from a policy perspective, units in multifamily dwellings are typically much smaller than single family homes. An apartment building could easily have a 600 square foot median unit size, depending on the building’s unit mix. This would mean that the property owner would only be able to develop 300 square foot units. This policy would have a disparate impact on families with children, as 300 square feet is not enough space to house a family. Familial status is a protected class under both state and federal fair housing law (Gov. Code § 12955; 42 USC § 3601 et seq.) and this regulation would violate the City’s duty to affirmatively further fair housing. (Gov. Code, § 8899.50.)

### **Impermissible Size Limitation on Detached ADU on Multifamily Properties**

City code section 18.42.180(K)(2)(d) limits new construction, detached ADUs (including those on multifamily properties) to 1,200 square feet. However, ADUs that meet the requirements of Government Code Section 66323, subdivision (a)(4) may not be subject to any size limitation. This is because, as discussed *supra*, this section of state law imposes upon the city a duty to approve the ADUs described in that section via a building permit only, without subjecting them to any of the potential standards listed in Sections 66314 to 66322. This

means that the City may not impose this size restriction on new construction ADUs on multifamily properties.

### **Impermissible Certificate of Occupancy Delay**

City code section 18.42.180(G) states that the City will not issue a certificate of occupancy for an ADU until it has issued a certificate of occupancy for the primary dwelling. This unusual regulation is not allowed by state law.

Government Code section 66317, subdivision (a) states:

“... . If the permit application to create or serve an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family or multifamily dwelling on the lot, the permitting agency may delay approving or denying the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency approves or denies the permit application to create the new single-family or multifamily dwelling, but the application to create or serve the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing ...”

The law allows the City to delay the ADU permit application until the single-family dwelling permit is approved. It does not allow the City to delay issuance of a certificate of occupancy.

As discussed *supra*, state law does not allow the City to independently create regulations to discourage ADU development. Instead, state law 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.”

And, of course, the City may not impose this condition on any ADUs that qualify for the protections of Government Code section 66323, given that this section of law imposes a duty on the City to approve such ADUs via ministerial issuance of a building permit and does not allow the City to impose any of the requirements allowed under sections 66314 through 66322.

There are many reasons that a family might choose to initially occupy an ADU. Home development is highly expensive. It is vastly more affordable (and faster) to develop an ADU than a primary dwelling. A family may choose to develop and occupy an ADU while building the primary dwelling, thus saving on rent while they finish the construction project. This regulation does not seem to serve any rational basis, unless the purpose is to discourage the development of ADUs with new single-family homes.

## Impermissible Front Setback Requirement

City code section 18.42.180(K)(2)(c) requires ADUs to comply with front setbacks based on the underlying zoning district, with an exception only made if the applicant is unable to build an 800 square foot ADU anywhere else on the property.

However, Government Code section 66323, subdivision (a) does not permit imposition of front setback requirements if the ADUs 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.



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](http://www.calhdf.org).

Sincerely,

A blue ink signature of Dylan Casey, consisting of stylized, overlapping loops and a long horizontal stroke extending to the right.

Dylan Casey  
CalHDF Executive Director

A black ink signature of James M. Lloyd, featuring a large, stylized 'J' followed by 'M. Lloyd' in a cursive script.

James M. Lloyd  
CalHDF Director of Planning and Investigations