

## Gautho, Julia

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**From:** James Lloyd <james@calhdf.org>  
**Sent:** Thursday, October 24, 2024 3:45 PM  
**To:** City Council; Brown, Kristen; Brooks, Yvette; Clarke, Joe; Margaux Morgan; Pedersen, Alexander  
**Cc:** Gautho, Julia; Planning; Goldstein, Jamie (jgoldstein@ci.capitola.ca.us); Samantha Zutler  
**Subject:** [PDF] CalHDF comment re ADU ordinance amendments for 10/24/24 Council meeting  
**Attachments:** Capitola - ADU Ordinance - 24 Oct 2024.pdf

Dear Capitola City Council,

Please see attached CalHDF's public comments regarding the proposed amendments to the City's ADU ordinance, calendared as agenda item 9B for tonight's Council meeting.

Sincerely,

James M. Lloyd  
Director of Planning and Investigations  
California Housing Defense Fund  
[james@calhdf.org](mailto:james@calhdf.org)



Oct 24, 2024

City of Capitola  
420 Capitola Ave  
Capitola, CA 95010

Re: Proposed Amendments to City's ADU Ordinance

By email: [citycouncil@ci.capitola.ca.us](mailto:citycouncil@ci.capitola.ca.us); [thekristenbrown@gmail.com](mailto:thekristenbrown@gmail.com);  
[ybrooks@ci.capitola.ca.us](mailto:ybrooks@ci.capitola.ca.us); [JClarke@ci.capitola.ca.us](mailto:JClarke@ci.capitola.ca.us); [mmorgan@ci.capitola.ca.us](mailto:mmorgan@ci.capitola.ca.us);  
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[jgoldstein@ci.capitola.ca.us](mailto:jgoldstein@ci.capitola.ca.us); [szutler@bwslaw.com](mailto:szutler@bwslaw.com)

Dear Capitola City Council,

The California Housing Defense Fund ("CalHDF") submits this letter to remind the City of its obligation to abide by all relevant state laws when evaluating the proposed amendments to the City's accessory dwelling unit ("ADU") ordinance.

The proposed ordinance has several areas where it violates state law, as detailed below. The City should amend the proposed ordinance to comply with state law prior to passage.

### 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, Gov. Code, § 66323 prescribes a narrower set of ADU types for which it imposes a ministerial duty on cities 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.*)

SB 1211, effective 1 January 2025, makes this even more explicit: Gov. Code, § 66323, subdivision (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).”

In addition, ADUs that qualify for the protections of Gov. Code, § 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 Public Hearing and Discretionary Approval**

The Capitola code creates a process for discretionary approval of certain ADUs by the Planning Commission. See Capitola Code sections 1774.030 (B), 1774.030 (C), 1774.070, and 1774.110

However, state law does not allow any such process. Government Code section 66316:

“An existing accessory dwelling unit ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes ...”

Government code section 66317, subdivision (a):

“ A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing ...”

If the City wishes to create a path for approval of certain ADUs that are taller or larger than a given threshold, then it should write objective criteria into its code and allow ministerial approval by City staff.

### **Impermissible Survey Requirement**

Capitola Code section 1774.040(i)(3) imposes a requirement for a land survey on the conversion of structures within four feet of a property line. However, as stated above, Government Code section 66315 prohibits the imposition of any standards not listed in

section 66314. Given that this section does not provide for requiring a land survey, the City may not require it in this instance.

### **Impermissible HOA Approval Requirement**

Capitola Code section 1774.040(L) requires Homeowners Association approval for certain ADUs. However, as discussed above, Government Code section 66315 forbids the City from imposing any requirements not listed in Government Code 66314 as a condition of ADU development. Fundamentally, whether or not an HOA has approved an ADU is a private legal matter between nongovernmental parties and has no bearing on the City's permitting process.

### **Incorrect Limit on Multifamily ADUs**

SB 1211 expanded the number of allowable new construction, detached ADUs in conjunction with an existing multifamily dwelling from two to eight. (Gov. Code, § 66323, subd. (a)(4)(ii).)

Capitola Code section 1774.050(D) limits the number of ADUs in conjunction with an existing multifamily to two ADUs. As of January 1, 2025, the City must increase this limit to eight ADUs, pursuant to SB 1211.

### **Unlawful Deed Restriction Requirement**

Capitola Code section 1774.120 imposes a deed restriction requirement as a condition of a certificate of occupancy for an ADU. This is a clear violation of Government Code section 66323, which prohibits any standards not explicitly authorized in that section. Owner occupancy standards 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.

Additionally, such deed restrictions imposed on ADUs 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.)

The City should therefore eliminate the deed restriction requirement for all ADUs.



CalHDF appreciates that the City is amending its ADU ordinance to keep pace with state law changes. However, the City should make sure that its ordinance actually comports with state law, as the City committed to doing in its Housing Element.

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

James M. Lloyd  
CalHDF Director of Planning and Investigations