

Gautho, Julia

From: James Lloyd <james@calhdf.org>
Sent: Wednesday, September 10, 2025 11:42 AM
To: City Council; Clarke, Joe; Margaux Morgan; Gerry Jensen; Melinda Orbach; Westman, Susan
Cc: Gautho, Julia; Planning; Goldstein, Jamie (jgoldstein@ci.capitola.ca.us); Samantha Zutler
Subject: [PDF] public comment re agenda item 9B for the September 11, 2025 Council meeting
Attachments: Capitola - ADU Ordinance - 10 Sep 2025.pdf

Dear Capitola City Council,

The California Housing Defense Fund (“CalHDF”) submits the attached public comment regarding the proposed amendments to the City’s accessory dwelling unit (“ADU”) ordinance, calendared as agenda item 9B for the September 11, 2025 Council meeting.

Sincerely,

James M. Lloyd
Director of Planning and Investigations
California Housing Defense Fund
james@calhdf.org
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Sep 10, 2025

City of Capitola
420 Capitola Ave
Capitola, CA 95010

Re: Proposed Amendments to City's ADU Ordinance

By email: citycouncil@ci.capitola.ca.us; JClarke@ci.capitola.ca.us;
mmorgan@ci.capitola.ca.us; gjensen@ci.capitola.ca.us; MOrbach@ci.capitola.ca.us;
SWestman@ci.capitola.ca.us

Cc: jgautho@ci.capitola.ca.us; planning@ci.capitola.ca.us;
jgoldstein@ci.capitola.ca.us; 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, calendared as agenda item 9B for the September 11, 2025 Council meeting.

CalHDF would like to thank the City for removing the deed restriction requirement for ADUs, for removing the HOA approval requirement, and for allowing up to eight detached ADUs on multifamily parcels, as we requested in our October 2024 letter.

However, the proposed ordinance has a specific area 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.

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(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 §§ 1774.030 (B), 1774.030 (C), 1774.070, 1774.100, 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.



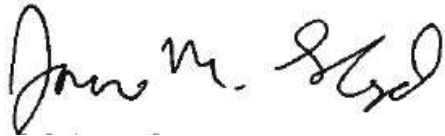
CalHDF appreciates that the City is amending its ADU ordinance to keep pace with state law changes. However, the City should make sure that its ordinance actually comports with state law, as the City committed to doing in its Housing Element.

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.

Sincerely,



Dylan Casey
CalHDF Executive Director



James M. Lloyd
CalHDF Director of Planning and Investigations