



Sep 3, 2024

City of San Pablo
1000 Gateway Ave
San Pablo, CA 94806

By Email: patriciap@sanpabloca.gov; ArturoC@sanpabloca.gov; ElizabethP@sanpabloca.gov;
RitaX@sanpabloca.gov; abelp@sanpabloca.gov

CC: cityclerk@sanpabloca.gov; BrianH@sanpabloca.gov; libbyt@sanpabloca.gov;
mattr@sanpabloca.gov

Re: Proposed Amendments to San Pablo's ADU Ordinance

Dear San Pablo City Council,

The California Housing Defense Fund ("CalHDF") submits this letter regarding agenda item 12 for the September 3, 2024 City of San Pablo ("the City") Council meeting, an amendment to the City's accessory dwelling unit ("ADU") ordinance. CalHDF writes to highlight a number of areas in which the proposed ordinance does not comply with state law.

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.*) 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).))

Impermissible Development Standards

Proposed San Pablo Code ("SPC") Section 17.60.070(D)(2)(b)(ii) requires front setbacks of the underlying zoning district "unless the front setback requirement would be prohibitive of an

360 Grand Ave #323, Oakland 94610
hi@calhdf.org

ADU of up to 800 square feet ...” However, for ADUs that meet the requirements of Government Code Section 66323, subd. (a)(4), the City may not impose any front setback requirement at all.

SPC Section 17.60.070(F)(2)(d) requires a building-to-building separation of six feet for ADUs, with the caveat that this standards “shall not prevent the development of an ADU that is eight hundred feet or less in area ...” However, for ADUs that meet the requirements of Government Code Section 66323, subd. (a), the City may not impose any building to building separation requirement at all.

SPC Section 17.60.070(F)(3) imposes parking requirements on ADUs with some exceptions. However, for ADUs that meet the requirements of Government Code Section 66323, subd. (a), the City may not impose any parking requirements at all.

SPC Section 17.60.070(F)(5) mandates that detached ADUs be developed on a permanent foundation. However, the authority to mandate a permanent foundation is not found in Government Code 66314, and Government Code Section 66315 forbids local agencies from imposing additional local requirements: “Section 66314 establishes the maximum standards that a local agency shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in Section 66314, shall be used or imposed ... “

Impermissible Deed Restrictions

SPC Section 17.60.070(I) requires a deed restriction to be recorded against the property as a condition of developing an ADU. However, 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.)

Additionally, 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.” A deed restriction would be an “additional standard” and thus cannot be imposed.

Referenced Code Sections Are Out of Date

Finally, since the City last amended its ADU ordinance, the state law regulating ADU development has been reorganized, with the law currently resident at Government Code Section 66310 *et seq.* The City's references to state law in its code are therefore out of date.



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".

Dylan Casey
CalHDF Executive Director

A handwritten signature in black ink, appearing to read "James M. Lloyd".

James M. Lloyd
CalHDF Director of Planning and Investigations