

**From:** [James Lloyd](#)  
**To:** [PlanningCommission AP](#)  
**Cc:** [Aastha Vashist](#); [OCM AP](#); [CityClerk AP](#); [CityAttorney AP](#); [CDD-Admin AP](#)  
**Subject:** CalHDF comment re item 3, ADU ordinance, for 2/10/25 Planning Commission meeting.  
**Date:** Friday, February 7, 2025 1:07:19 PM  
**Attachments:** [Sunnyvale ADU Ordinance Letter - 7 Feb 2025.pdf](#)

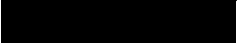
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Dear Sunnyvale Planning Commission,

The California Housing Defense Fund (“CalHDF”) submits the attached public comment concerning item 3 on the agenda for the Planning Commission meeting scheduled for February 10, 2025, an amendment to the City’s regulations for ADUs and JADUs.

Sincerely,

James M. Lloyd  
Director of Planning and Investigations  
California Housing Defense Fund  




Feb 7, 2025

City of Sunnyvale  
456 W. Olive Ave  
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**Re:** Proposed Amendments to the City's Accessory Dwelling Unit and Junior Accessory Dwelling Unit Regulations

Dear Sunnyvale Planning Commission,

The California Housing Defense Fund ("CalHDF") submits this letter as a public comment concerning item 3 on the agenda for the Planning Commission meeting scheduled for February 10, 2025, an amendment to the City's regulations for ADUs and JADUs. This proposed ordinance 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 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 Tree Removal Standards**

City code sections 19.79.030(l)(2) and (p) regulate the removal of certain trees in conjunction with ADU development. Section 19.79.030(l)(2) requires a resource alteration permit to remove a heritage tree. Section 19.79.030(p) requires a replacement tree for each protected tree that is removed. CalHDF appreciates the benefits that trees can provide in developed areas. However, state ADU law tightly constrains the regulations that the City may impose on ADU development.

Regarding historic resources, Government Code section 66314, subdivision (b)(1) allows the imposition of standards to “prevent adverse impacts on any real property that is listed in the California Register of Historical Resources.” Any such standards must be “objective.” (Gov. Code, § 66314, subd. (b)(1).) ADU law defines “objective standards as “standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” (Gov. Code, § 66313, subd. (i).)

If the City wishes to protect state register-listed trees, to the extent that any are present in the City, then it may establish objective standards to do so. However, the City is still bound to consider ADU applications on a ministerial basis, without discretionary review or hearing. (Gov. Code, §§ 66316 and 66317.) The City may not require the applicant to go through a discretionary process pursuant to section 19.96.090 of the City Code for an ADU application because said application necessitates removal of a tree. And the City may not impose standards at all with respect to trees not listed on the state register.

Additionally, as discussed *supra*, the City may not impose any development standards on ADUs that qualify for the protections of Government Code 66323, subdivision (a) (referenced in the City’s code as “streamlined ADUs”), beyond the height and setback standards listed in that section of law. For such ADUs, the City may not impose the heritage tree regulation in section 19.79.030(l)(2), nor may it impose the protected tree removal regulations of section 19.79.030(p).

See pages 18-20 of the HCD's January 2025 ADU [Handbook](#) for further information on section 66323 ADUs. For instance, from page 20 of the Handbook: "A local agency may not impose development or design standards, including both local standards and standards found in State ADU Law, on 66323 Units that are not specifically listed in Government Code section 66323. (Gov. Code, § 66323, subds. (a), (b).) This includes, but is not limited to, parking, height, setbacks, or other zoning provisions (e.g., lot size, open space, floor area ratio, etc.)."



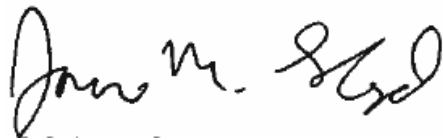
CalHDF appreciates the City's effort to implement state law governing ADU construction. However, the City should amend its ordinance to ensure that it complies with state law.

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

Dylan Casey  
CalHDF Executive Director

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

James M. Lloyd  
CalHDF Director of Planning and Investigations