



Oct 10, 2024

Town of Ross
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Re: Proposed Changes to the Town's ADU Ordinance

Dear Ross Town Council,

The California Housing Defense Fund ("CalHDF") submits this letter regarding the proposed amendments to the Town's accessory dwelling unit ("ADU") ordinance, calendared as agenda item 8 for the 10 October 2024 Council meeting.

CalHDF appreciates that the Town is updating its municipal code to remain compliant with state law. However, the proposed ordinance would violate state law in several ways, as detailed below.

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).)

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Additionally, 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.”

Impermissible Development Standards

Ross Town Code (“RTC”) Section 18.42.050(g) would require that ADUs be on a permanent foundation. However, 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.” Given that Government Code section 66314 does not allow for such foundation requirements, the Town may not apply such requirements on ADUs.

Additionally, Government Code section 66313, subdivision (a)(2) provides that an ADU may be a manufactured home as defined in Section 18007 of the Health and Safety Code. In its definition of a manufactured home, Section 18007 states that it must be “built on a permanent chassis and designed to be used as a single-family dwelling with or without a foundation when connected to the required utilities ...” Therefore, in order to accommodate the use of manufactured homes as ADUs, the Town may not mandate a permanent foundation.

Impermissible Restrictions Based on Prior Land Use Actions

RTC Section 18.42.055 states that an ADU may not conflict with any requirements associated with prior land use entitlements. However, this conflicts with state law on its face. For instance, if land was subdivided and zoned as single-family only with a design review, inherently an ADU application would conflict with that prior land use entitlement. The entire point of state ADU law, and local enacting ordinances, is that it supersedes all prior land use actions in a given jurisdiction.

Impermissible Discretionary Process

RTC Sections 18.42.040(b), 18.42.065, and 18.42.080 allow for a discretionary process for the approval of ADUs that do not meet the standards in the code, with a required public hearing. However, Government Code Section 66316 only allows for ministerial approvals: “... 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, provisions, or requirements for those units...” Furthermore, Government Code section 66317, subdivision (a) forbids any discretionary review or public hearing: “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, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits.”

The reason for this is simple - homeowners should not have to go through public hearings or discretionary processes to build an ADU, and they may not be aware of the ministerial pathway. If the Town wants to create a more flexible process for larger ADUs or for ADUs that exceed the standards, they should create a ministerial process with objective standards wherein Town staff will approve the projects without a hearing.



CalHDF urges the City to amend the proposed ordinance to comport with state law, as committed to in Program 3-I of the Town’s Housing Element. This is especially important given that the Town is planning for ADU development to account for approximately two thirds of its Regional Housing Needs Allocation (“RHNA”) and more than 70% of its lower-income RHNA.

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', 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