



**Mar 24, 2025**

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**Re:** Proposed Amendments to the City's Accessory Dwelling Unit and Junior Accessory Dwelling Unit Regulations

Dear Fontana City Council,

The California Housing Defense Fund ("CalHDF") submits this letter as a public comment concerning Public Hearing item D on the agenda for the Council meeting scheduled for March 25, 2025, an amendment to the City's regulations for ADUs and JADUs. This proposed ordinance fails to comply with state law in a few specific aspects, 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)."].)

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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 Deed Restriction Requirement**

Code section 30-467(e)(8) requires a deed restriction to be placed on the property prior to issuance of a building permit for an ADU. This is a clear violation of Government Code section 66323, which prohibits any standards not explicitly authorized in that section. Deed restrictions are also not permitted by Government Code section 66315, which forbids standards not listed in section 66314.

The California Department of Housing and Community Development (“HCD”) has communicated that such deed restrictions are unlawful. The January 2025 HCD ADU [Handbook](#) specifically forbids deed restrictions as a condition of ADU development (see page 22).

Additionally, such deed restrictions imposed on ADUs (or on other accessory structures) are unenforceable. This is due to the absence of horizontal privity between the Town and the applicant. In other words, since the Town 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 amend the proposed ordinance to remove the deed restriction requirement.

### **Out of Date Government Code References**

Code section 30-467(a)(1) references Government Code sections 65852.2 and 65852.22. Code section 30-467(e)(5) references Government Code section 65852.26. However, in 2024 the state ADU law was reorganized. State ADU law is now located at Government Code sections 66314 et seq., state JADU law is located at sections 66333 et seq., and the law regarding separate ADU sales is located at sections 66340 et seq.



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,

Handwritten signature of Dylan Casey in blue ink.

Dylan Casey  
CalHDF Executive Director

Handwritten signature of James M. Lloyd in black ink.

James M. Lloyd  
CalHDF Director of Planning and Investigations