

# PLANNING COMMISSION

Meeting Date: 08/05/2024

## ADDITIONAL ITEM ADDED AFTER DISTRIBUTION OF PACKET (#2)

### AGENDA ITEM # 3

**Applicant/Project Name:** City of San Marcos  
**Project Number:** TA24-0003

**Brief Description:** Comment Letter from California Housing Defense Fund (CalHDF) with response from City of San Marcos.

**Date** 08/05/2024  
**Time** 9:00 a.m.



Jul 30, 2024

San Marcos Planning Commission  
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Re: Proposed Amendment to the City's Accessory Dwelling Unit Regulations

Dear San Marcos Planning Commission,

The California Housing Defense Fund ("CalHDF") submits this letter as a public comment concerning item 3 on the agenda for the August 5, 2024, Planning Commission meeting. Specifically, CalHDF writes to flag a number of areas where the proposed accessory dwelling unit ("ADU") and junior accessory dwelling unit ("JADU") ordinance violates state law.

### **Impermissible Non-Objective Development Standards**

Gov. Code, §§ 66314 and 66315 establish clearly that only objective standards may be imposed on ADUs. Section 20.410.050 of the proposed ordinance violates state law by imposing non-objective standards, such as by requiring that "All accessory structures and ADUs shall be architecturally compatible with any existing dwelling unit on the same lot" and that the "exterior design of all accessory structures and ADUs shall be in harmony with and maintain the scale of the neighborhood." As it is impossible for an applicant to know *ex ante* what a plan examiner will consider "architecturally compatible," "in harmony with," or "mainain[ing] the scale of the neighborhood," these are not objective standards.

### **ADUs Protected by Gov. Code, § 66323**

Gov. Code, § 66323 creates a class of ADUs and JADUs **that must be allowed by the City** without the imposition of development standards other than building code standards and basic height and setback standards. Under Gov. Code, § 66323, local governments "shall

ministerially approve an application” for an ADUs that meet four sets of criteria.<sup>1</sup> This duty applies “Notwithstanding Sections 66314 to 66322,” which imposes a ministerial duty without application of development standards allowed under §§ 66314 to 66322. The word “notwithstanding” indicates a legislative intent to override all contrary law. (*People v. Tillman* (1999) 73 Cal.App.4th 771, 784–785.) Therefore applying any development standards not contained in § 66323 to qualifying ADUs conflicts with the ministerial duty to approve established under that section.

## **Design standards**

Proposed code § 20.410.050 violates Gov. Code, § 66323 by applying impermissible design standards to ADUs and JADUs otherwise protected by it. Code § 20.410.050:

All accessory structures and ADUs shall be architecturally compatible with any existing dwelling unit on the same lot.

1. All accessory structures and ADUs shall use the same building materials as the existing primary dwelling unit on the lot by incorporating the same or similar architectural features, building materials, and color as the primary dwelling unit on the property. These features shall include roofing material, roof design, fascia, exterior building finish, color, exterior doors and windows (including ratios of window dimensions [i.e., width to height] and window area to wall area), garage door, and architectural enhancements. If the accessory structure or ADU does not use the same building materials as the existing primary dwelling unit on the lot, the architectural features of the primary dwelling unit may be modified to modernize the structure, as long as the accessory structure or ADU maintains the same building materials as the modified primary dwelling unit.

2. The exterior design of all accessory structures and ADUs shall be in harmony with and maintain the scale of the neighborhood.

Gov. Code, § 66323 does not permit the imposition of any local development standards beyond basic side and rear setback requirements and height limits delineated by state law. The various design standards and non-objective criteria in Code § 20.410.050 are therefore prohibited by Gov. Code, § 66323.

Because of the clear standards within Gov. Code, § 66323, and the prohibition against the local imposition of standards regarding architectural styles, roof pitches, siding, etc. for ADUs that meet such standards, builders have been able to produce pre-fabricated ADUs that fit the standards of Gov. Code, § 66323 and can be installed in any jurisdiction in the

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<sup>1</sup> These four categories are: (1) ADUs converted from space in existing structures on single family lots, (2) one detached ADU per single family lot that meets certain requirements, (3) multiple ADUs converted from nonresidential space in multifamily buildings, and (3) two detached ADUs per multifamily lot that meets certain requirements.

state. This has resulted in lower per-unit costs than what can be achieved through traditional design and construction techniques.

By illegally imposing design standards on ADUs protected by Gov. Code, § 66323, not only is San Marcos breaking the law, it is also denying its residents the opportunity afforded to the residents of every other jurisdiction in the state - the ability to develop a pre-fabricated ADU and house a relative or a tenant (or get extra living space for the family) at the lowest per-unit cost available in California.

### **ADU Location**

Additionally While Gov. Code, § 66323 allows four foot side and rear setbacks for new construction ADUs, it does not permit a city to require that an ADU be placed to the side or rear of a primary dwelling unit, regardless of whether or not it is possible to build an ADU elsewhere on the property. Proposed code § 20.410.060(E)(4) therefore violates Gov. Code § 66323 by only allowing ADUs in the front setback area if there is no other feasible location (emphasis added):

No front setback or location restriction noted in this section shall be required for ADUs pursuant to Government Code Section 66323(a)(2) **if no other feasible location on the parcel is available ...**

The policy reason for this is simple: front yards are typically underutilized, ornamental spaces. Back yards are more private and can be used for many activities that are unsafe in the front yard. For instance, with a fenced-in backyard, children or pets can play or otherwise recreate without fear that they will go into the street. A household may prefer to sacrifice the underutilized front yard for an ADU rather than the much more useful backyard.

### **Maximum Size**

Proposed code § 20.410.060(C)(1)(a) violates Gov. Code, § 66323, subd. (a)(1) by imposing a square footage maximum on ADUs protected by this section of state law (emphasis added):

The total floor area of an ADU **shall not exceed fifty percent (50%) of the living area of the proposed or existing primary dwelling**, provided, however, that the maximum square footage allowed must be at least eight hundred and fifty (850) square feet of gross floor area.

State law does not permit a size limitation on ADUs that are within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure, do not include an expansion of not more than 150 square feet beyond the same physical

dimensions as the existing accessory structure for ingress/egress, have exterior access, and have sufficient side and rear setbacks for fire and safety. (Gov. Code, § 66323, subd. (a)(1).)

### **Parking Standards**

Proposed code § 20.410.060(J) imposes parking standards on ADUs. Of note, parking standards may not be imposed on ADUs that comply with Gov. Code, § 66323, as the law explicitly forbids imposition of any of the standards allowed by §§ 66314 through 66322, including parking standards.

### **Ridgeline Overlay**

Section 20.410.060(N) reads as follows:

Ridgeline Overlay Zone Restrictions. ADUs in the Ridgeline Overlay Zone must comply with certain sections of Chapter 20.260, including Subsections 20.260.050.E (Building Placement, Maximum Height, and Basements), 20.260.050.F (Architecture), 20.260.050.H (Color and Materials), and 20.260.050.J (Fire Fuel Modification), except as prohibited by state law. However, ADUs in the Ridgeline Overlay Zone shall not be subject to any requirements that conflict with the requirements set forth in this chapter.

By imposing various standards on all ADUs, this section violates Gov. Code, § 66323. Additionally, the caveat “except as prohibited by state law” is so non-specific that it is impossible to ask a plan examiner to interpret this to mean that such standards cannot be imposed on ADUs protected by Gov. Code, § 66323.



While it is laudable that the City is amending its ADU ordinance to keep up to date with state law, the City should make sure its laws actually comply with state law, as committed to by the City’s 6th cycle Housing Element.

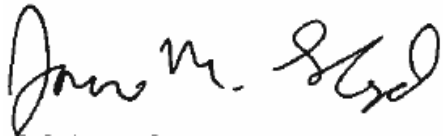
The City is relying on ADUs for 48 units of its RHNA allocation. Furthermore, Program 9 of the adopted Housing Element commits the City to promoting the development of ADUs that are affordable to lower income and moderate income households and the development of ADUs in areas of opportunity. The draft ordinance, by imposing illegal standards on ADUs, fails to promote the development of ADUs and definitely fails to promote the development of ADUs affordable to lower income and moderate income households. We therefore encourage the City to amend the draft ordinance to bring it into compliance 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 long horizontal stroke 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 stroke extending to the right.

James M. Lloyd  
CalHDF Director of Planning and Investigations



DATE: August 5, 2024  
TO: Planning Commission  
FROM: Planning Division  
RE: Item 3 - Response to HDF Letter (Attached)

San Marcos received a letter from the California Housing Defense Fund (HDF), a non-profit housing advocacy group, with comments regarding the proposed ADU ordinance. Below are the City's responses to their comments.

### ***Design Standards***

#### HDF Comment

HDF contends that a local government may not impose any development standards beyond basic side and rear setbacks requirements and height limits delineated by state law. HDF further asserts that state law prohibits local imposition of standards regarding architectural styles, roof pitches, siding, etc. Specifically, HDF argues that §20.410.050 of our proposed ADU ordinance includes impermissible design standards relating to building materials and architectural review in violation of Cal. Gov. Code §66323. Objections are also made to non-objective review criteria within the subsection.

#### Reply

A local government is not limited to setback and height limitations. Objective standards may be imposed. Cal. Gov. Code §66314(b)(1) states that a local agency may "Impose objective standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review . . ." No changes to the noted subsection are required to comply with state law.

Any references to non-objective criteria were removed from the subsection.

### ***ADU Location***

#### HDF Comment

HDF asserts that a local government may not require an ADU to be placed to the side or the rear of the primary dwelling unit regardless of where an ADU is feasibly possible on the property. Specifically, HDF believes that § 20.410.060(E)(4), which limits ADUs to the back or side yards unless an ADU is only feasibly located in the front yard is a violation of Cal. Gov. Code § 66323.

#### Reply



Limiting ADU location to back and side yards is an objective standard permitted by Cal. Gov. Code 66314(b) (1). Under certain circumstances pursuant to Cal. Gov. Code § 66323, the City cannot impose location requirements if such requirements would deem the ADU infeasible.

### ***ADU Size***

#### HDF Comment

HDF asserts that Cal. Gov. Code §66323 prohibits local governments from imposing square footage maximums and that the 850 square footage maximum in SMMC §20.410.060(C)(1)(a) violates state law.

#### Reply

Cal. Gov. Code §66321(b)(2)(A) permits the imposition of size maximums.

... “(b) Notwithstanding subdivision (a), a local agency shall not establish by ordinance any of the following:

(1) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(2) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(A) Eight hundred fifty square feet.”

### ***Parking Standards***

#### HDF Comment

HDF writes that an ADU pursuant to Cal. Gov. Code § 66323 may not impose parking standards.

#### Reply

Cal. Gov. Code §66314(D)(10)(A) permits parking requirements unless an exception applies. The proposed ordinance accurately reflects the limits and exceptions of state law.

### ***Ridgeline Overlay***

#### HDF Comment

HDF writes that imposing various standards from the Ridgeline Overlay Zone on all ADUs is prohibited by Cal.Gov. Code §66323.





### Reply

The requirements of the Ridgeline Overlay Zone are objective standards that may be imposed. Cal. Gov. Code §66314(b)(1) states that a local agency may “Impose objective standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit...” No changes to the noted subsection are required to comply with state law.