

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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October 11, 2022

Susan Galvan, Interim Community Development Director
Community Development
City of Orange
300 E. Chapman Ave
Orange, CA 92866

Dear Susan Galvan:

**RE: Review of the City of Orange's Accessory Dwelling Unit (ADU) Ordinance
under State ADU Law (Gov. Code, § 65852.2)**

Thank you for submitting the City of Orange (City) accessory dwelling unit (ADU) Ordinance No. 03-21 (Ordinance), adopted April 13, 2021, to the California Department of Housing and Community Development (HCD). HCD has reviewed the Ordinance and submits these written findings pursuant to Government Code section 65852.2, subdivision (h). HCD finds that the Ordinance does not comply with section 65852.2 in the manner noted below. Under that statute, the City has up to 30 days to respond to these findings. Accordingly, the City must provide a written response to these findings no later than November 10, 2022.

The Ordinance addresses many statutory requirements; however, HCD finds that the Ordinance does not comply with State ADU Law in the following respects:

- Section XX, 17.29.040 (A)(3)(a) and (c) – *Efficiency Kitchen* – The Ordinance states that an efficiency kitchen for Junior Accessory Dwelling Units (JADUs) must include a “kitchen sink, cooking appliances and refrigeration facilities, each having a clear working space of no less than 30 inches in front.” However, the sink requirement, previously specified in Government Code section 65862.22, subdivision (a)(6), was removed and statute does not specify any type of appliances, thereby creating more options to satisfy the appliance requirement. Efficiency kitchen is now defined as “[a] cooking facility with appliances.” (Gov. Code, § 65852.22, subd. (a)(6)(A).) It shall include “[a] food preparation counter and storage cabinets that are in reasonable size in relation to the size of the junior accessory dwelling unit.” (Gov. Code, § 65852.22, subd. (a)(6)(B).) The City must remove the sink requirement, the reference to refrigeration facilities as well as the clear working space of no less than 30 inches in front to comply with existing statute. HCD recommends adopting

language strictly per the above-mentioned subdivisions for conciseness and compliance.

- Section XX, 17.29.090 (E) – *Exception* – The Ordinance states that “An ADU or JADU that complies with the requirements of Government Code section 65852.2(e) shall not be subject to design or development standards unless otherwise provided herein.” However, there are no circumstances under which local design or development standards may be applied to units subject to Government Code section 65852.2, subdivision (e). The City should remove the language “unless otherwise provided herein” or amend it to “unless otherwise provided *by state law*.”
- Section XX, 17.29.110 – *Bedroom Restrictions* – The Ordinance states that “...the number of bedrooms in an ADU or JADU shall be proportionate to the square feet of living area for the ADU or JADU...”, followed by a graduated system of allowed bedrooms in ADUs. However, limiting the number of bedrooms within ADUs and JADUs could be construed as a discriminatory practice towards protected classes and could be considered a constraint on the development of ADUs for families with children, people with disabilities, and other protected groups in violation of state and federal fair housing laws, including but not limited to Government Code section 65008, subdivisions (a)(1)(A) and (b)(1)(B)(i). Therefore, the City should evaluate these potential constraints and consider removing these sections. Please note that the 2019 California Residential Code sections R304.1 and R304.2 provide the minimum floor area and dimensions for habitable rooms (i.e., bedrooms) which would apply to ADUs. The 2019 CRC limitations exist to protect health and safety, and further limitations on bedroom size and bedroom count in an ADU ordinance would be in excess of these existing standards. Furthermore, local development standards provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), do not apply to ADUs created under Government Code section 65852.2, subdivision (e). Therefore, the City must remove these limitations for ADUs created under subdivision (e).
- Section XX, 17.29.120 (A) and 17.29.200 (C) – *Separate Sale* – The Ordinance prohibits separate sale of an ADU from its primary dwelling. However, Government Code section 65852.26 creates a narrow exception to allow separate conveyance of an ADU to a qualified buyer if the property was built or developed by a qualified nonprofit corporation, among other things. The City must revise the Ordinance to allow for such an exception.

In response to the findings in this letter, and pursuant to Government Code section 65852.2, subdivision (h)(2)(B), the City must either amend the Ordinance to comply with State ADU Law or adopt the Ordinance without changes. Should the City choose to adopt the Ordinance without the changes specified by HCD, the City must include findings in its resolution that explain the reasons the City finds that the Ordinance

complies with State ADU Law despite the findings made by HCD. Accordingly, the City's response should provide a plan and timeline to bring the Ordinance into compliance.

Please note that, pursuant to Government Code section 65852.2, subdivision (h)(3)(A), if the City fails to take either course of action and bring the ordinance into compliance with State ADU Law, HCD may notify the City and the California Office of the Attorney General that the City is in violation of State ADU Law.

HCD appreciates the City's efforts in the preparation and adoption of the Ordinance and welcomes the opportunity to assist the City in fully complying with State ADU Law. Please feel free to contact Mike Van Gorder, of our staff, at (916) 776-7541 or at mike.vangorder@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannan West". The signature is fluid and cursive, with the first name "Shannan" and the last name "West" clearly distinguishable.

Shannan West
Housing Accountability Unit Chief