

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

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August 10, 2022

Cheryl Kuta
Development Services Director
City of Rancho Santa Margarita
22112 El Paseo
Rancho Santa Margarita, CA 92688

Dear Cheryl Kuta:

**RE: Review of Rancho Santa Margarita's Accessory Dwelling Unit (ADU)
Ordinance under State ADU Law (Gov. Code, § 65852.2)**

Thank you for submitting the City of Rancho Santa Margarita (City) accessory dwelling unit (ADU) Ordinance No. 21-02 (Ordinance), adopted May 26, 2021, to the California Department of Housing and Community Development (HCD). The Ordinance was received on July 16, 2021. HCD has reviewed the Ordinance and is submitting 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 September 9, 2022.

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

- Sec. 9.04.190 (e)(4)(b) and (f)(2) – *Minimum Size & Efficiency Units* – The Ordinance states that the minimum size of an attached or detached ADU shall be at least 220 square feet and that a junior accessory dwelling unit (JADU) shall not be less than 220 square feet. However, Government Code section 65852.2, subdivision (c)(2)(A), allows for the creation of efficiency units as defined in section 17958.1 of the Health and Safety Code and prohibits “a minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.” Section 17958.1 defines efficiency units as having “a minimum floor area of 150 square feet....” The City must change the language accordingly.
- Sec. 9.04.190 (e)(4)(c)(ii) – *Height* – The Ordinance states that attached or converted ADUs shall not exceed the height of the tallest point of the existing primary structure and shall comply with the height limit of the applicable zoning

district. However, Government Code section 65852.2, subdivision (c)(2)(C), states that a local agency shall not establish an ordinance for either attached or detached dwellings that does not permit an ADU that is at least 16 feet in height. Limiting the height of attached ADUs in reference to the height of the existing primary structure and the applicable zoning code could prohibit ADUs of at least 16 feet in height in cases where the existing primary structure is less than 16 feet. The City must add or modify language to assure permitting of an ADU that is at least 16 feet in height regardless of the height of the primary dwelling.

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 provided 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 Gerlinde Bernd, of our staff, at (916) 820-1997 or at gerlinde.bernd@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" written in a larger, more prominent script than the last name "West".

Shannan West
Housing Accountability Unit Chief
Housing Policy Development Division