

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

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February 24, 2023

Debbie Chamberlain, Community Development Director
Executive Team
City of San Ramon
S7000 Bollinger Canyon Rd.
San Ramon, CA 94583

Dear Debbie Chamberlain:

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

Thank you for submitting the City of San Ramon's (City) accessory dwelling unit (ADU) Ordinance No. 496 (Ordinance), adopted January 28, 2020, to the California Department of Housing and Community Development (HCD). The Ordinance was received on February 14, 2020. 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 March 22, 2023.

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

- Section D4-39(A)(3) – “*Accessory Dwelling Unit*” – The Ordinance defines an Accessory Dwelling Unit as “an attached or detached subordinate dwelling unit located on a lot which contains a single-family or multi-family dwelling.” However, Government Code section 65852.2, subdivision (a)(1)(D)(iii) states that “the accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling.” Units created within the primary dwelling are also called “conversions.” Therefore, the City must amend the Ordinance to include ADUs created within the proposed or existing primary dwelling.
- Section D4-39(B)(1) – *Applicability* – The Ordinance states that “within a new or proposed single-family home, a maximum of one accessory dwelling unit and one junior accessory dwelling unit is allowed per lot if the space has exterior access from the proposed or existing single-family dwelling and meets required

setbacks sufficient for fire and safety.” However, Government Code section 65852.2, subdivision (e)(1), states that a “local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create *any* of the following...” Subdivision (e)(1)(A) proceeds to allow for one ADU and one junior accessory dwelling unit (JADU) created within the proposed space, and subdivision (e)(1)(B) allows for a detached ADU that meets the 800 square feet, height, and setback requirements. Therefore, the City must amend the Ordinance to allow for these combinations.

- Section D4-39(B)(2) – *Applicability* – The Ordinance states: “A lot with a multi-family dwelling structure is limited to a maximum of two detached accessory dwelling units.” However, this does not allow for ADU conversions under Government Code section 65852.2, subdivision (e)(1)(C), which states that local agencies shall ministerially approve: “Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.” Therefore, the City must amend the Ordinance to allow for conversions within the multifamily dwelling.
- Section D4-39(C)(1)(a) – “*Unit size*” – The Ordinance states: “An accessory dwelling unit attached or constructed within an existing dwelling, shall contain at least 150 square feet, but not more than 50 percent of the net floor area of the existing dwelling, or 850 square feet, whichever is greater.” Government Code section 65852.2, subdivision (c)(2), states that local agencies “...may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.” However, the size maximums do not apply to ADUs created from proposed or existing dwellings such as conversions. The City must amend the Ordinance to remove the size limitation for conversions.
- Section D4-39(C)(2)(a) and (b) – *Setback Requirements* – The Ordinance requires that attached ADUs conform to the “setbacks generally applicable to the residential development in the applicable zone” and that detached ADUs shall be setback “a minimum of 20 feet from the front property line.” However, Government Code section 65852.2, subdivision (c)(2)(C), states that the local agency may not establish “Any requirement for... front setbacks...for either attached or detached dwellings that do not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks...”. Further, Government Code section 65852.2, subdivision (a)(1)(D)(vii), states that “a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling...” The City must amend the Ordinance to remove the front setback restriction and confirm that no more than four-foot side and rear yard setbacks are required for attached and detached ADUs regardless of the setbacks generally applicable to the residential development.

- Section D4-39(C)(3)(a) and (C)(3)(b) – *ADU Height* – The Ordinance states that ADU height is based on the maximum height allowed for resident construction in applicable zones. However, Government Code section 65852.2, subdivision (c)(2)(D), prescribes the height limitations for detached and attached ADUs, and sets the limit at 16, 18 or 25 feet as provided in the subdivision. The City must amend the Ordinance according to the applicable provisions.
- Section D4-39(C)(5)(a), (C)(5)(d) – *Subjective Design Standards* – The Ordinance stipulates that “The exterior design shall be in harmony with the immediate neighborhood”. It also states that ADUs “shall be designed to minimize potential privacy issues... and additional landscaping may be required.” However, Government Code section 65852.2, subdivision (a)(6), requires that jurisdictions “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...”. Additionally, Government Code section 65852.2, subdivision (a)(1)(B)(i), requires that ADU ordinances “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, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources.” Subdivision (j)(7) further defines “Objective standards” as “standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” Because terms such as “harmony”, “immediate neighborhood” and “potential privacy issues” are subjective within the meaning of the statute, and the phrase “additional landscaping may be required” refers to a discretionary decision-making process, these provisions violate state statute. The City must remove these requirements in the Ordinance.
- Section D4-39(C)(5)(b) – *Outside ADU Access* – The Ordinance requires that “Outside access to the accessory unit shall not be in the front of the existing dwelling”. However, 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 amend the Ordinance to exempt ADUs created pursuant to subdivision (e) from this requirement.
- Section D4-39(C)(5)(c) – *Utility Connection* – The Ordinance requires utility connections for ADUs “based on the service provider’s standards for accessory dwelling units”. However, Government Code section 65852.2, subdivision (f)(4), states “For an accessory dwelling unit described in subparagraph (A) of

paragraph (1) of subdivision (e), a local agency, special district, or water corporation **shall not require the applicant to install a new or separate utility connection** directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family dwelling.” Subparagraph (A) of paragraph (1) of subdivision (e) refers to ADUs and JADUs that are created within a proposed or existing single-family residence. Therefore, the City must amend the Ordinance to clarify that this section would not apply to units created pursuant to Government Code section 65852.2, subdivision (e)(1)(A).

- Section D4-39(D) – *Short Term Occupancy* – The Ordinance allows for ADU rentals less than 30 days if “approved for ‘lodging uses’ pursuant to the site zoning designation.” However, Government Code section 65852.2, subdivision (e)(5), states that local agencies “...shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.” Therefore, the City must amend the language to state that any unit created subject to subdivision (e) may not be rented for terms shorter than 30 days.
- Section D4-39(E) – *Non-conforming Units* – The Ordinance states: “Where the existing dwelling unit constitutes a legal non-conforming unit, an accessory unit may be constructed only if the non-conformity is not expanded, and the accessory unit meets all current applicable zoning standards.” However, Government Code section 65852.2, subdivision (e)(2), states: “A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.” Furthermore, subdivision (d)(2) states: “The local agency shall not deny an application for a permit to create an accessory dwelling unit due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and are not affected by the construction of the accessory dwelling unit.” Therefore, the City must remove this clause.
- Section D4-39(F) – *Subdivision* – The Ordinance requires that “Accessory units shall not be offered for separate sale from the primary residence...” However, Government Code section 65852.26 allows for the separate conveyance of an ADU if it meets all the requirements listed in subdivision (a) of the statute. The Ordinance must be amended to allow for such a conveyance.

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 Nick Green, of our staff, at (916) 841-6665 or at Nicholas.Green@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