

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

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January 20, 2023

Jeffrey Beiswenger, Planning Manager  
Planning Division  
City of Rohnert Park  
130 Avram Ave, 2<sup>nd</sup> Floor  
Rohnert Park, CA 94928

Dear Jeffrey Beiswenger:

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

Thank you for submitting the City of Rohnert Park's accessory dwelling unit (ADU) Ordinance No. 950 (Ordinance), adopted August 25, 2020, 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 February 17, 2023.

The Ordinance addresses many statutory requirements and is in some cases more permissive than State ADU Law; however, HCD finds that the Ordinance does not comply with State ADU Law in the following respects:

- Section 17.07.020(X)(1) – Allowable zoning – the Ordinance states that “Accessory dwelling units (ADUs) or junior accessory dwelling unit (JADUs) shall be permitted... on any lot zoned to allow for a single-family or multi-family residential uses.” However, state law limits JADUs, “...to one per residential lot zoned for single-family residences with a single-family residence built, or proposed to be built, on the lot (Gov. Code, § 65852.22, subd. (a)(1)). Therefore, the City must revise the ordinance to clarify that JADUs are permitted only in lots zoned for single family.
- Section 17.07.020(X)(2) and 17.07.020 (X)(6)(b) – *Separate Conveyance and Deed Restriction*– The Ordinance in (X)(2) states that “ADUs or JADUs shall not be sold separately from the primary structure on the lot nor shall any subdivision

of the land separating the ADU or JADU and the primary structure be permitted by the City.” Moreover in (X)(6), the Ordinance requires a deed restriction prohibiting the separate sale of an ADU. However, Government Code section 65852.26, subdivision (a)(1), creates a narrow exception to allow separate conveyance of an ADU with the involvement of a “qualified non-profit corporation” for “properties intended to be sold to low-income families who participate in a special no-interest loan program”. The City must amend to the Ordinance to allow for this exception.

- Section 17.07.020.X(4)(a) and (e) – *Design Guidelines* – The Ordinance states ADUs and JADUs ... (a) “shall be designed to be *architecturally compatible* with the primary dwelling unit (or structure), and in (e) “An ADU located above the first floor of an accessory structure (e.g., above a garage) shall be designed so as to *minimize privacy impacts* on neighboring properties...”. However, Government Code section 65852.2, subdivision (a)(6), states that a local agency “shall 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, except as otherwise provided in this subdivision.” Terms such as “architecturally compatible” and “minimize privacy impacts” are subjective and therefore discretionary, potentially violating state statute.

Moreover, State ADU Law requires local agencies to apply only objective standards. ‘Objective Standards’ for ADUs to mean “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” (Gov. Code, § 65852.2, subd. (a)(1)(B)(i), (e)(7) and (j)(7)). Therefore, the City must remove such discretionary language.

- Section 17.07.020(X)(5)(a) that an ADU or JADU may be permitted...” However, Government Code section 65852.2, subdivision (e)(1)(A), permits one ADU *and* one JADU per lot with a proposed or existing single-family dwelling. Therefore, the City must amend the Ordinance to allow for both a detached and attached ADU and JADU for a single-family residence.
- Section 17.07.020.X 5 (a)(iii) – Fire Safety Setbacks – The Ordinance states that an attached ADU shall be permitted, among other criteria, if “The side and rear setbacks are sufficient for fire and safety.” However, this subsection could preclude an ADU that meets the minimum four feet rear and side setbacks (Gov Code, § 65852.2, subd. (e)(1)(B)). Therefore, the City should clarify this section that the maximum setback that can be imposed is four feet.
- Section 17.07.020 X(5)(b)(ii) – Height Limits – The Ordinance states that a detached ADU may not exceed 16 feet in height. However, the law has recently been amended to increase the maximum height limitation that may be imposed to

18 feet if the ADU is either within a half-mile walking distance of a major transit stop or a high-quality transit corridor, as defined, or detached and on a lot that has an existing multifamily, multistory dwelling (Gov. Code, § 65852.2, subd. (c)(2)(D)(ii) and (iii); and (e)(1)(B)(ii)). Moreover, State ADU Law allows for the maximum height limitation of 25 feet on an ADU that is attached to a primary dwelling, with some exceptions (Gov. Code, § 65852.2, subd. (c)(2)(D)(iv)). The City must amend the height limitations it imposes on ADUs to conform to current Statute.

- Section 17.07.020 X(5)(b)(iii) – JADU in detached ADU – The Ordinance states, “The detached ADU may include a JADU...” However, per Government Code section 65852.22, subdivision (j)(1), a JADU is defined as “a unit that is no more than 500 square feet in size and contained entirely *within a single-family residence*.” As such, a JADU cannot lawfully be permitted in a detached ADU. The City must remove this provision.
- Section 17.07.020.X(5)(c) – *Detached multi-family ADUs* – The Ordinance states “not more than two detached ADUs shall be permitted when all of the following apply: (i). Four-foot side and rear yard setbacks are maintained. (ii) Total combined floor area of not more than 800 square feet.” The provision in subpart (ii) appears to limit the total square footage of *both* ADUs (total combined) to 800 total square feet. However, this does not comport with State ADU Law which permits two detached ADUs of up to 850 square feet each (Gov Code, § 65852.2, subd. (c)(2)(B) and (e)(1)(D)). Therefore, the City should amend their Ordinance to allow for at least 850 square feet per detached ADU.
- Section 17.07.020.X(7)(d) – *Additional JADU Requirements* – The Ordinance states that “A JADU shall include an efficiency kitchen, with the following minimal requirements: i. a sink with a maximum waste line diameter of 1.5 inches, ii. a cooking facility with appliances that do not require electrical service greater than 120 volts, natural gas, or propane gas.” However, the sink requirement, previously specified in Government Code section 65862.22, subdivision (a)(6), was removed. Government Code section 65852.22, subdivision (a)(6)(A) only requires that an Efficiency kitchen include “[a] cooking facility with appliances.” It shall also 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)). Therefore, the City must remove the sink requirement. HCD recommends adopting language strictly per the above-mentioned subdivisions for conciseness and compliance.
- Section 17.07.020.X(9) – *Capacity, Connection, and Impact Fees* – The Ordinance states that “a new, separate or upgraded utility connection may be required between the primary residence/ADU and the public water or sewer utility if site specific conditions necessitate a new connection in order to provide minimum levels of utility service.” The Ordinance as written could require a utility

connection for certain new-construction ADUs in violation of statute. Government Code section 65852.2, subdivision (f)(4), states that “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”, and Government Code section 65852.2, subdivision (e)(1)(A) permits “One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling.” Therefore, an ADU built under subdivision (e)(1)(A) that is part of a proposed or existing single-family home may not be required to provide a utility connection. The City should note the exemption for ADUs built under subdivision (e)(1)(A).

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 Michael McLaughlin, ADU Unit Specialist, at (916) 776-7773 or at [Michael.McLaughlin@hcd.ca.gov](mailto:Michael.McLaughlin@hcd.ca.gov).

Sincerely,

A handwritten signature in black ink that reads "Shannan West". The signature is written in a cursive, flowing style.

Shannan West  
Housing Accountability Unit Chief