

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

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April 8, 2019

John A. Russo, City Manager
City of Irvine
1 Civic Center Plaza
Irvine, CA 92606

Dear John Russo:

RE: Proposed Short-term Rentals and Boarding Houses Ordinance Amendment

The purpose of this letter is to assist the city in its decision making regarding the City of Irvine's proposed short-term rentals and boarding houses ordinance amendment, particularly the "boarding house" definition. In 2017, Governor Brown signed the 2017 Legislative Housing Package, which provides a renewed focus on housing, one of the most basic needs for every Californian. Chapter 370 Statutes of 2017, Assembly Bill (AB) 72, is one of the bills that was passed. AB 72 expands and clarifies the Department of Housing and Community Development's (HCD) enforcement authorities. HCD will review local government's actions and inactions, including program actions committed within an adopted housing element, to determine consistency or inconsistency with state housing law. If HCD makes findings of inconsistency, housing element compliance may be revoked and additional actions may be taken, including referral to the Attorney General's Office.

HCD's November 4, 2013 review found the city's adopted housing element in full compliance with state housing element law (Article 10.6 of the Government Code). As part of the housing element update, Irvine was required to provide an analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for persons with disabilities including land-use controls, building codes and their enforcement, site improvements, fees, and other exactions required of developers. (Government Code section 65583 (a)(5)).

In addition, Gov. Code section 65008 renders null and void any action that denies enjoyment of residence, landownership, tenancy or other interest in land to individuals based on protected classes, including intended occupancy of any residential development by persons of very low, low, moderate, or middle income. Local agencies are prohibited from discriminating based on protected classes including, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information of that person. Local agencies may not impose different requirements on affordable developments than those imposed on non-assisted projects, however they

may extend preferential treatment to affordable developments, such as reduction of fees.

As discussed in our phone call with the Manager of Neighborhood Services, after reviewing the proposed definition of "boarding house," HCD is concerned certain provisions may impose unintentional constraints upon the availability of housing for persons with disabilities or other protected classes. The provisions of potential concern include:

- Additional scrutiny of those with separate rental agreements,
- Subjective elements of the "single housekeeping unit" definition, and
- Potential fair housing issues related to implementation of the definition of "single housekeeping unit," including but not limited to different treatment of persons based on marital status, familial status, race, or nationality.

These provisions have the potential to impact housing programs that seek to provide independent living opportunities for special needs populations. Such housing could include housing with supportive services or shared-housing opportunities for seniors wanting to remain in their home, or persons with developmental disabilities wanting to live outside of an institutional setting. Depending on the individual needs of the renter, programs may require separate leases for each tenant residing in a residence or the tenant may be selected by an outside organization. While some of these programs may operate with governmental funding, others may be run by charities or non-profits utilizing alternative funding sources.

The proposed provisions may also disproportionately affect tenants based on familial or marital status, race, nationality, or have a disparate impact on those that are low-income. Even if unintentional, the burdens placed on citizens through the subjective administration of proposed provisions has the potential to invalidate the ordinance.

HCD appreciates the difficulty jurisdictions face in balancing competing interests when making land-use decisions and acknowledge the desire to address neighborhood concerns related to parking and noise. However, the city also has the responsibility to ensure that housing is available for all members of the community including those with special needs and those who are members of a protected class. If you have any questions concerning this letter, please contact Melinda Coy, of our staff, at (916) 263-7425.

Sincerely,



Zachary Olmstead
Deputy Director

cc: Jeffrey T. Melching, City Attorney
Rutan & Tucker, LLP

Pete Carmichael, Director
Community Development

Steve Holtz, Manager of Neighborhood Services
Community Development Department