

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

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February 3, 2023

Denice Thomas
Community Development Director
City of Agoura Hills
30001 Ladyface Court
Agoura Hills, CA 91301

Dear Denice Thomas:

RE: Review of Agoura Hills' Accessory Dwelling Unit (ADU) Ordinance under ADU Law (Gov. Code, § 65852.2)

Thank you for submitting the City of Agoura Hills (City) accessory dwelling unit (ADU) Ordinance No. 21-456 (Ordinance) adopted August 25, 2021, to the California Department of Housing and Community Development (HCD). The Ordinance was received on December 3, 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 March 6, 2023.

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

- Section 9120 – *Definition Junior Accessory Dwelling Unit* – The Ordinance defines a Junior ADU (JADU) as being “contained entirely within a single-family residence, excluding an attached garage”. Government Code section 65852.22, subdivision (i)(1), defines a JADU as “a unit...contained entirely within a single-family residence.” However, recent amendments to the statute in Government Code section 65852.22, subdivision (a)(4), add that a local agency may “Require a permitted junior accessory dwelling unit to be constructed within the walls of the proposed or existing single-family residence. For purposes of this paragraph, enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence.” Therefore, because JADUs may be constructed in an attached garage, the City must revise this section to conform with current statute.

- Sections 9283 and 9283.2 (1) – *Very High Fire Hazard Severity Zone* – The Ordinance states in its purpose declaration that “A substantial portion of the City of Agoura Hills is located in a designated ‘Very High Fire Hazard Severity Zone’ and this chapter ensures that ADUs and JADUs are developed and operated on adequate sites, at proper and desirable locations, and that the goals and objectives of the General Plan are observed.” The Ordinance then permits only one ADU **or** JADU for sites in the Very High Fire Hazard Severity Zone (VHFHSZ) that have less than “two distinct means of vehicular access,” and creates a discretionary process for approval of other units.

While the California Department of Forestry and Fire Protection (CalFire) maps establish the VHFHSZ boundaries, the intent of these maps is not to limit the locations where ADUs or other dwellings may be permitted. Rather, the CalFire maps identify areas in which hazard mitigating building design standards will apply. The note on the CalFire map for Agoura Hills even states, “In late 2005 to be effective in 2008, the California Building Commission adopted California Building Code Chapter 7A requiring new buildings in VHFHSZs to use ignition resistant construction methods and materials. These new codes include provisions to improve the ignition resistance of buildings, especially from firebrands. The updated very high fire hazard severity zones will be used by building officials for new building permits in LRA. The updated zones will also be used to identify property whose owners must comply with natural hazards disclosure requirements at time of property sale and 100-foot defensible space clearance. It is likely that the fire hazard severity zones will be used for updates to the safety element of general plans.”¹

Further, ADU restrictions through local development standards provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), would not apply to ADUs created under Government Code section 65852.2, subdivision (e). Therefore, ADUs created under subdivision (e) cannot be restricted by local ordinance.

Lastly, the “Fire Safety Review” allows for the Director to “determine... sufficient fire safety measures”, which constitutes an additional discretionary process. However, Government Code section 65852.2, subdivision (a)(3), requires “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.” Therefore, the City must remove 9283.2 (1) and rely on the application of the building code to address fire safety.

¹ https://osfm.fire.ca.gov/media/5800/agoura_hills.pdf

- Sections 9283.1 (1)(b) and (d), 9283.5 (2),(4),(9) – *Height* – The Ordinance states in several places that the height limitation for ADUs is 16 feet. However, ADU statute restricts local agencies from requiring the height of attached and detached ADUs, to be less than either 16, 18, or 25 feet pursuant to Government Code section 65852.2, subdivisions (c)(2)(D) and (e)(1)(B)(ii). The City must amend the Ordinance to allow for the minimum height requirements in State ADU Law.
- Section 9283.2 (2) – *Building Separation* – The Ordinance requires that ADUs within the VHFHSZ “...must maintain a 10-foot separation between the accessory dwelling unit and any other structure.” However, pursuant to Government Code section 65852.2, subdivision (c)(2)(C), a local agency may not establish by Ordinance “Any...limits on lot coverage, floor area ratio, open space, front setbacks, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards. In as much as a 10-foot separation requirement would limit the placement of an 800 square foot ADU, the Ordinance must be amended to comply with State ADU Law.
- Section 9283.2 (3) – *Detached ADU Setbacks* – The Ordinance requires that detached ADUs in the VHFHSZ “shall provide a minimum setback of five feet from the side and rear lot lines.” However, per Government Code section 65852.2, subdivisions (a)(1)(D)(vii), (c)(2)(C), (e)(1)(B) and (D), the setbacks from side and rear lot lines shall not be required to be greater than four feet. Therefore, the City must revise this section to comply with State ADU Law.
- Section 9283.2 (4) – *Conversion of Existing Parking Structure* – The Ordinance requires that “For a garage, carport, or covered parking structure located within a Very High Fire Hazard Severity Zone that is converted to an ADU, onsite replacement parking spaces shall be required that comply with the minimum number of spaces stated in Section 9654.6.” However, Government Code section 65852.2, subdivision (a)(1)(D)(xi), states that “When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those off-street parking spaces be replaced.” Therefore, the City must remove this requirement.
- Section 9283.2 (5) – *Setbacks* – The Ordinance states that “an ADU shall comply with all front yard setback requirements applicable to the lot’s primary residence. Unless otherwise provided in this Section, any new attached or detached ADUs shall have a minimum setback of four (4) feet from the rear property line and four (4) feet from the side property line. However, Government Code section 65852.2, subdivision (c)(2)(C), states that “Any...limits on lot coverage, floor area ratio, open space, *front setbacks*, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards”

(emphasis added). As far as front yard setback requirements applicable for the primary residence may limit the placement of ADUs in the front yard, the Ordinance must be amended to comply with State ADU Law. The City may not impose front setback requirements that would exclude at least an 800 square foot ADU.

- Section 9283.3 (2)(a)(ii) – *ADU Sold Separate from the Primary Dwelling* – The Ordinance states that “the ADU or JADU shall not be sold or conveyed separately from the primary residence.” However, Government Code 65852.26, subdivision (a)(1), which went into effect January 1, 2022, creates a narrow exception to allow separate conveyance of ADUs with the involvement of qualified nonprofit housing organizations. The City should revise the Ordinance to allow for such an exception.
- Section 9283.5 (3)(c) – *ADU Size* – The Ordinance states that the maximum gross area of a “New detached ADU in an existing legally established accessory structure” shall not exceed “850 square feet for a one bedroom and 1,000 square feet for an ADU with more than one bedroom.” A “New detached ADU in an *existing legally established accessory structure*” is a *conversion of an accessory structure* to an ADU. Government Code section 65852.2, subdivision (e)(1), provides that “notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit” for an ADU that, according to Government Code section 65852.2, subdivision (e)(1)(A)(i), “is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or *accessory structure*.” Subdivisions (a) to (d) include the entirety of local standards that jurisdictions may require for *new construction* ADUs. Subdivision (e)(1)(A) exempts such ADUs as are created out of such *converted* space from local design standards beyond those within the base building code. Therefore, per Government Code section 65852.2, subdivision (e)(1), units created through the conversion of detached structures are not subject to height limitations of any kind. Lastly, the Ordinance already governs converted units in Section 9283.1(a)(i) which contradicts Section 9283.5 (3)(c). Therefore, the City must remove Section 9283.5 (3)(c).
- Section 9283.5 (5)(a) – *Old Agoura Design Overlay* – The Ordinance states that “Notwithstanding these provisions, in the Old Agoura Design Overlay District, a detached ADU may be erected in the required minimum front yard provided it does not exceed more than twenty-five (25) percent of the minimum required front yard.” However, Government Code section 65852.2, subdivision (c)(2)(C), prohibits “Any requirement for a zoning clearance or separate zoning review or any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, front setbacks, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.” Therefore, the City must remove this section or note the 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 that reads "Shannan West". The signature is written in a cursive, flowing style.

Shannan West
Housing Accountability Unit Chief