

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

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March 24, 2023

Tom Cole, Director  
Community Development Department  
City of Santa Clarita  
23920 W. Valencia Blvd. Suite 302  
Santa Clarita, CA 91355

Dear Tom Cole:

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

Thank you for submitting the City of Santa Clarita's (City) accessory dwelling unit (ADU) Ordinance No. 21-1 (Ordinance), adopted January 26, 2021, 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 sections 65852.2 and 65852.22 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 April 21, 2023.

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

- **17.42.010 – Parking Exemptions** – The Ordinance lists the parking exemptions for ADUs in the Residential Use Types table under “Parking”. However, this list omits one condition as stated in Government Code section 65852.2, subdivision (d)(1)(B): a local agency shall not impose parking standards for an ADU when “[t]he accessory dwelling unit is located within an architecturally and historically significant historic district.” The City should amend this section to address the omission.
- **17.51.030 (C)(6)(a)(vii) – Landscape Standards for ADUs** – The Ordinance states that one (1) twenty-four (24) inch box tree shall be planted in the front or corner yard setback of a unit if it is located along a street frontage. However, local development standards provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), cannot preclude ADUs created under Government Code section 65852.2, subdivision (e). While the City may award voluntary tree planting by providing incentives,

it may not make it a requirement. The City might consider creating or modifying incentive programs to encourage tree planting. Accordingly, the City must either remove the tree planting requirement from the Ordinance or clarify its incentives.

- 17.57.040 (L)(1)(a) – *Locations of ADUs in Zones* – The Ordinance states that ADUs may be permitted only on parcels that are zoned to allow single-family or multifamily dwelling residential use and that include a proposed or existing residential unit and provides for zones allowing ADUs. Chapter 17.34 of the City’s municipal code defines the Community Commercial (CC) and Neighborhood Commercial (CN) Zones which allow for multifamily dwellings. However, the Ordinance did not include these zones in Section 17.42.010 when identifying zones permitting ADUs. Government Code section 65852.2, subdivision (a), permits ADUs in all areas zoned to allow single-family and multifamily dwelling use. Hence, ADUs may be allowed in zones, such as agricultural, commercial, or mixed-use zones wherever residential uses are allowed. Therefore, the City must revise and include these zones to permit ADUs and should state in the language that ADUs are permitted in any zone that allows residential or mixed use.
- 17.57.040 (L)(1)(b) – *ADUs in High Fire Hazard Severity Zone* – The Ordinance states that where a lot or any portion is located in a high fire hazard severity zone (HFHSZ), an ADU shall be prohibited on the lot unless it either fronts a highway and vehicles enter directly from the highway, or it has two means of direct vehicular access to a highway that meets certain requirements. The requirements listed under this section of the Ordinance should be removed as they go beyond the scope of State ADU Law. Although the Ordinance does not cite the statute, the City seems to be relying on Government Code section 65852.2, subdivision (a)(1)(A), which states that a local agency may adopt an ordinance that designates areas where ADUs may be permitted “based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.” Any limitations, by local ordinance, on where ADUs may be permitted must be based only on these narrow factors and should be accompanied by detailed findings of fact explaining why ADU limitations are required on the basis of these factors.

Further, even if the City would provide adequate justification for this restriction on ADUs under this subdivision, the City may not restrict ADUs that fall under subdivision (e), as local development standards (such as an area restriction based on high fire hazard severity designation) provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), cannot preclude ADUs created under Government Code section 65852.2,

subdivision (e). Therefore, the City must ministerially permit units created pursuant to subdivision (e).

Finally, please note that the fire hazard severity zone maps prepared by California Department of Forestry and Fire Protection (CAL FIRE)<sup>1</sup> were not intended to serve as a development moratorium. Rather, these maps and corresponding hazard severity zones are intended to be used for planning purposes and mitigation measures. Specifically, development projects located in HFHSZs are required to conform with the stricter building standards set forth in Chapter 7A of the California Building Code.

- 17.57.040 (L)(2)(c) – *Setbacks* – The Ordinance states that ADUs shall comply with corner and reverse corner setbacks unless it can be demonstrated that a four-foot side setback does not create a safety hazard. However, Government Code section 65852.2, subdivision (a)(1)(D)(vii), states: “a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.” However, side lot line setbacks, established in statute, apply to the street sides of a corner lot. Further, Government Code section 65852.2, subdivision (c)(1)(C), states that a local agency may not impose “Any requirement for...front setbacks that would 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 clarify that the provision applies to front setbacks only.
- 17.57.040 (L)(2)(D) – *Height* – The Ordinance requires an “Adjustment Permit” for any ADU in excess of 16 feet in height. This permit is not described in this Ordinance; it appears to be a non-ministerial process. Moreover, be advised that height limits increased as of January 1, 2023, with the passage of Senate Bill 897 (Chapter 664, Statutes of 2022), codified in Government Code section 65852.2, subdivision (c)(2)(D)(ii). As such, lot-wide height minimum allowances are 18 feet and attached ADUs in most cases may be up to 25 feet. The City must amend the Ordinance accordingly.
- 17.57.040 (L)(2)(h) – *Rear Yard Coverage* – The Ordinance states that ADUs shall count as buildings for the purposes of calculating rear yard coverage. The City may impose development standards such as the rear yard coverage; however, Government Code section 65852.2, subdivision (c)(2)(C), states

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<sup>1</sup> For more information, please visit Cal FIRE's website: <https://osfm.fire.ca.gov/divisions/community-wildfire-preparedness-and-mitigation/wildland-hazards-building-codes/fire-hazard-severity-zones-maps/>.

that the City must still accommodate for an ADU of up to at least 800 square feet with four-foot rear and side yard setbacks. If this is the only allowable space, the City must allow for the ADU to be built in the minimum required distance area. The Ordinance must be revised to include “where feasible,” which will give more flexibility in language to accommodate an ADU of at least 800 square feet.

- 17.57.040 (L)(2)(k) – *Distance Between Structures* – The Ordinance states that a detached ADU shall be located at least six (6) feet away from the exterior wall of the primary dwelling unit. In addition, the Ordinance states that if detached ADUs share a common roof structure (e.g., a breezeway, service porch, covered patio, etc.), the breezeway or patio shall be at least six feet wide for safety purposes. The City may impose development standards such as the distance between structures; however, Government Code section 65852.2, subdivision (c)(2)(C), states that the City must still accommodate for a detached ADU of up to at least 800 square feet, and with four-foot rear and side yard setbacks to be built in the minimum required distance area if this is the only allowable space. The Ordinance must be revised to include “where feasible,” which will give more flexibility in language to accommodate an ADU of at least 800 square feet.
- 17.57.040 (L)(2)(n)(ii) – *Residency Requirements* – The Ordinance states that in accordance with Government Code section 65852.22, owner-occupancy is always required where a lot includes a Junior ADU (JADU). However, Government Code section 65852.22, subdivision (a)(2), states that owner-occupancy in the single-family residence in which the JADU will be permitted shall not be required if the owner is another government agency, land trust, or housing organization. The ordinance must be revised to align with Government Code section 65852.22, subdivision (a)(2).
- 17.57.040 (L)(2)(o) – *Open Space Requirement* – The Ordinance states that should construction of an ADU result in the loss of required open space, the property owner shall provide equivalent replacement open space on site. However, per Government Code section 65852.2, subdivision (c)(2)(C), the City must allow for an ADU of up to at least 800 square feet, and with four-foot rear and side yard setbacks to be built in the minimum required distance area if this is the only allowable space. Also, local development standards provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), cannot preclude ADUs created under subdivision (e). The City should clarify this requirement and add the clause, “However, no local design standard, such as the open space requirement, shall preclude an accessory dwelling unit of at least 800 square feet with a height limit of 18 feet and four-foot setbacks from being constructed.”

- 17.57.040 (L)(2)(p) – *Oak Trees* – The Ordinance states that the Oak Tree Preservation Ordinance (Section 17.51.040) shall apply to the construction of ADUs or conversion of structures to ADUs. However, Government Code Section 65852.2, subdivision (a)(7), states that no other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision. A broad application of the Oak Tree Preservation ordinance could conflict and limit ADU creation and violate State ADU Law. Furthermore, Government Code section 65852.2, subdivision (c)(2)(C), requires that local design standards cannot preclude the creation of an 800 square foot ADU with four-foot side and rear setbacks. Therefore, the City must remove this section.
- 17.57.040 (L)(2)(q) – *Significant Ecological Areas* – The Ordinance states that the Significant Ecological Area (SEA) Overlay Zone (Section 17.38.080) shall apply to ADUs. Section 17.38.080 of the City’s municipal code states that the SEA overlay zone applies to areas identified on the adopted SEA map on file in the City, and any development including, but not limited to, grading permits, building permits and land use entitlements, in an area as indicated on the SEA map is subject to an SEA conformance review by the approving authority. However, Government Code section 65852.2, subdivision (a)(1)(A), states “the designation of areas [where ADUs are permitted] may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.” Any designation of an area where ADUs are not permitted may not be made on an ad-hoc basis, but rather must be designated and should be supported by the City’s findings. Lastly, local development standards or location constraints cannot preclude an ADU built subject to Government Code section 65852.2, subdivision (e). The City must remove this section or revise its language to only prohibit units where the adequacy of water and sewer services are insufficient and the impact of ADUs on traffic flow and public safety can be supported by findings.
- 17.57.040 (L)(2)(r) – *Separate Sale* – The Ordinance prohibits separate sale of an ADU from its primary dwelling. However, Government Code section 65852.26 creates a narrow exception to allow separate conveyance of an ADU to a qualified buyer if the property was built or developed by a qualified nonprofit corporation, among other things. The City must revise the Ordinance to allow for such an exception.
- 17.57.040 (L)(2)(t) – *Exception Clause* – The Ordinance creates a section that exempts an 800 square foot unit with a height limit of 16 feet and four-foot setbacks. However, this does not conform to the current text of Government Code section 65852.2, subdivision (c)(2)(D), which permits a height limit on such units of up to 18, 20 or 25 feet as provided in the subdivision. The Ordinance must add language which prohibits jurisdictions from applying “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” (Gov. Code, § 65852.2, subd. (c)(2)(C)).

- 17.57.040 (L)(3)(a) – *Number* – The Ordinance allows for one JADU in combination with an ADU on a lot zoned for single-family residences. However, Government Code section 65852.2, subdivision (e)(1), states that a local agency shall ministerially approve an application to create **any** of the following ADUs listed from subdivision (e)(1)(A) through (D). As further explained in the most recent ADU Handbook<sup>2</sup> of July 2022 on page 20, local jurisdictions must allow these unit types in combination with one another. Therefore, the City must amend the Ordinance to allow for a JADU, an ADU converted from space within a proposed or existing primary dwelling or accessory structure and a detached ADU of at least 800 square feet and four-foot side and rear setbacks.
- 17.57.040 (L)(3)(b)(i) – *ADUs On Lots with Multifamily Dwellings* – The Ordinance states that in the event the construction of an ADU results in the loss of the amenity required by ordinance or condition of approval, the amenity shall be replaced prior to occupancy of the first ADU. However, the Ordinance should clarify and define what “amenities” include. Local development standards like amenity replacement required by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), cannot preclude ADUs created under Government Code section 65852.2, subdivision (e). In addition, no other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision (Gov. Code, § 65852.2, subd. (a)(7)). Therefore, this section of the Ordinance must be removed or revised.
- 17.57.040 (L)(3)(b)(i) and (L)(3)(b)(ii) – *Unit Combination* – The Ordinance states that, for multifamily buildings, “...one of the two following categories of accessory dwelling units are permitted” and “Attached accessory dwelling units are not permitted on a lot that includes one or more detached accessory dwelling units.” This appears to prohibit the combination of units build subject to Government Code section 65852.2, subdivisions (e)(1)(C), which refers to conversions of existing space within the multifamily dwelling, and (e)(1)(D) which allows for two detached ADUs. Government Code section 65852.2,

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<sup>2</sup> HCD ADU Handbook can be found here: <https://www.hcd.ca.gov/sites/default/files/2022-07/ADUHandbookUpdate.pdf>.

subdivision (e)(1), states that a local agency shall ministerially approve an application to create any of the following ADUs listed from subdivision (e)(1)(A) through (D). As further explained in the most recent ADU Handbook of July 2022 on page 20, local jurisdictions must allow these unit types in combination with one another. Therefore, the City must amend the Ordinance to allow for a combination of ADUs for multifamily dwellings.

- 17.57.040 (L)(3)(b)(ii) – *Parking Requirements* – The Ordinance states that required parking, open space, or other amenities or site improvements required by the condition of approval that are demolished to construct these ADUs shall be replaced on site prior to occupancy of the first ADU. However, the Ordinance should clarify and define amenities, and shall not require that off street parking spaces be replaced when a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or converted to an ADU (Government Code section 65852.2, subdivision (a)(1)(D)(xi)). Lastly, local development standards like amenity replacement required by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), cannot preclude ADUs created under Government Code section 65852.2, subdivision (e). Therefore, the ADU ordinance must be revised to remove the replacement requirements,
- 17.57.040 (L)(5) – *Impact Fees* – The Ordinance states that impact fees imposed on ADUs shall be established by City Council resolution. However, Government Code section 65852.2, subdivision (f)(3)(A), states that any impact fees charged for an ADU of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit. For clarity, the Ordinance must be revised to include the exemption of ADUs less than 750 square feet from impact fees.

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.

Tom Cole, Director  
Page 8

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 Molivann Phlong, of our staff, at [Molivann.Phlong@hcd.ca.gov](mailto:Molivann.Phlong@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