

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

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



May 25, 2023

Diana Perkins, City Planner
City of Monte Sereno
18041 Saratoga-Los Gatos Road
Monte Sereno, CA 95030

Dear Diana Perkins:

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

Thank you for submitting the City of Monte Sereno (City) accessory dwelling unit (ADU) Ordinance No. NS-232 (Ordinance), adopted on December 20, 2022, 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 June 25, 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 10.06.140 (A)(4) – *Parking* – The Ordinance states, “No additional driveways shall be permitted, except for corner lots. Parking may be provided in setback areas or in a tandem configuration on an existing driveway, unless the Director determines that that [sic] parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.” However, Government Code section 65852.2, subdivision (a)(6), states that a permit application for an ADU must be approved ministerially, and without discretionary review. In addition, Government Code section 65852.2, subdivision (a)(1)(B)(i), authorizes the City to impose *objective* standards. Subdivision (j)(7) 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.” Leaving the decision up to the Director’s discretion without objective standards leaves room for an inconsistent application of the Ordinance. Therefore, the City must amend this section to remove any discretionary review from the Ordinance.

- Section 10.06.140 (A)(5) – *Access* – The Ordinance states, “An accessory dwelling unit which is attached to or within the primary residence on the lot shall not have any direct access to the primary residence but shall have a separate exterior entry which shall not be located on the same side of the primary residence as the principal exterior entry to the primary residence. The entry to any accessory dwelling unit shall be so configured and located that only one (1) main entrance to any property is visible from the adjacent street or road.” However, local design standards (such as door placement requirements) provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), may not preclude a unit built subject to Government Code section 65852.2, subdivision (e), which includes all converted units, all JADUs, 800 square-foot new construction detached units with four-foot setbacks, and detached units with multifamily primary dwelling structures. Therefore, the City should note the exceptions.
- Section 10.06.140 (A)(6) – *Locations Permitted* – The Ordinance states, “The accessory dwelling unit shall be allowed only on a lot or parcel which is connected to sanitary sewers and has access to a street conforming to City of Monte Sereno street standards.” However, Government Code section 65852.2, subdivision (a)(1)(A), only allows for local agencies to designate areas based on “the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.” While “street standards” is not defined in the Ordinance, the preclusion of ADUs in areas without paved streets (for example) could inappropriately limit ADU availability. Moreover, the lack of clarity about what is meant by “street standards” makes this provision subjective, whereas Government Code section 65852.2, subdivision (a)(1)(B)(i), requires the City to impose only *objective* standards. The City must amend this language.
- Section 10.06.140 (A)(9)(a) – *Setbacks* – The Ordinance states, “An accessory dwelling unit shall comply with the front setback required for an accessory structure in the residential zoning district within which it is located, unless the accessory dwelling unit is not more than 800 square feet and there is no alternative location on the lot that would allow for an 800 square foot accessory dwelling unit with four foot side and rear setbacks to be constructed.” While this provision generally conforms with Government Code section 65852.2, subdivision (c)(2)(C), it is unclear how this exception would be applied ministerially. Government Code section 65852.2, subdivision (a)(3)(A), prohibits a local agency from performing a discretionary review of an application to permit an ADU, and Government Code section 65852.150, subdivision (b), clarifies that the intent of the Legislature in adopting ADU Law is so that local ADU ordinances “are not so arbitrary, excessive, or burdensome so as to unreasonable restrict” the creation of ADUs.” Therefore, the City must amend the Ordinance to clarify how the City will

apply this requirement – that ADUs be constructed elsewhere on the lot before waiving standards that preclude an 800 square-foot ADU from being constructed partially or entirely within front setbacks – in such a way as to not make infeasible a proposed ADU.

- Section 10.06.140 (B)(3)(a) – *JADUs* – The Ordinance implies that a JADU could be created out of an accessory structure; however, Government Code 65852.22, subdivision (a)(4), specifies that a JADU may only be constructed within the walls of an existing or proposed single-family dwelling unit, and not inside accessory structures. Therefore, the City must amend this section to specify that JADUs must be within the walls of the primary single-family dwelling.

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 Tyler Galli, of our staff, at (916) 776-7613 or at Tyler.Galli@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Zisser', with a stylized flourish extending to the right.

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability