

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

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June 19, 2025

Ryan Leonard, Principal Planner
Department of Planning
City of Hesperia
9700 7th Ave.
Hesperia, CA 92345

Dear Ryan Leonard:

RE: Review of Hesperia's Accessory Dwelling Unit (ADU) Ordinance under State ADU Law (Gov. Code, §§ 66310 - 66342)

Thank you for submitting the City of Hesperia (City) ADU Ordinance No. 2024-13 (Ordinance), adopted December 3, 2024, 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 66326, subdivision (a). HCD finds that the Ordinance fails to comply with State ADU Laws in the manner noted below. Pursuant to Government Code section 66326, subdivision (b)(1), 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 July 18, 2025.

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

1. Chapter 16.12.360.C.b. – *Application Procedure* – The Ordinance states, “The City shall act on the application to create an ADU or a Junior ADU within 60 days from the date that the City receives a completed application...” However, Government Code Section 66317 (a) states, “The permitting agency shall either **approve or deny** the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application”, not merely act upon them. Therefore, the City must amend its ordinance to accurately reflect permitting requirements for local agencies.
2. Chapter 16.12.360; subdivision D.3.a, subdivision F.2.a. – *Unit Combination* - The Ordinance states, “Lots with an existing or proposed single-family residence may be permitted one (1) accessory dwelling, and one (1) junior accessory dwelling unit...”, limiting lots with single-family residences to one ADU and one junior accessory dwelling (JADU).

However, Government Code section 66323, subdivision (a), states, "Notwithstanding Sections 66314 to 66322, inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following: (1) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling...(A) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single family dwelling or existing space of a single-family dwelling or accessory structure." Paragraph (2) permits "[o]ne detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks." The use of the term "any" followed by a list of permitted ADU types indicates that any of these ADU types can be combined on a lot zoned for single-family dwellings.

This permits a homeowner to create one converted ADU; one detached, new construction ADU; and one JADU. Thus, if the local agency approves an ADU that is created from existing (or proposed) space, and the owner subsequently applies for a detached ADU (or vice versa) that meets the size and setback requirements of this section, the local agency cannot deny the application, nor deny a permit for a JADU under this section. This section also requires the ministerial approval of detached ADUs in combination with units created in portions of multifamily primary dwellings that are not used as habitable space. Therefore, the City must amend the Ordinance to provide for all ADU combinations described in Government Code section 66323.

3. Chapter 16.12.360.D.3.b – *Unit Allowance, Multi-family* - The Ordinance states that, for lots with existing multi-family units: "no more than two (2) detached accessory dwelling units may be permitted." However, Senate Bill (SB) 1211 (Chapter 296, § 3, Statutes of 2024) amended Government Code section 66323. Subdivision (a)(4)(A)(ii) and (iii), now allows for the following:
 - o (ii) On a lot with an existing multifamily dwelling, not more than eight detached accessory dwelling units. However, the number of accessory dwelling units allowable pursuant to this clause shall not exceed the number of existing units on the lot.
 - o (iii) On a lot with a proposed multifamily dwelling, not more than two detached accessory dwelling units.

Therefore, the City must amend its ordinance to allow up to eight detached ADUs in the circumstances outlined for lots with existing or proposed multi-family dwellings.

4. Chapter 16.12.360.D.11 – *Building Code* – The Ordinance states, “The design and construction of each ADU shall conform to all applicable provisions of the Building Code.” However, the Ordinance does not clarify whether the phrase “Building Code” refers to local, state, or either type of Building Code regulations. Additionally, the Ordinance does not distinguish between Building Code and Residential Code regulations, which apply to ADUs developed on lots with single-family dwellings and duplexes.¹ the City should amend the ordinance to make clear which “Building Code” standards apply to each type of ADU development.
5. Chapter 16.12.360.E.2 – *Detached ADU Floor Area* – The Ordinance states, “A detached accessory unit shall not exceed one thousand two hundred (1,200) square feet of livable floor area (excludes garage and any accessory structure) on any parcel.” This appears to reference the maximum detached ADU size imposed by Government Code section 66314, subdivision (d)(5). However, detached ADUs built pursuant to Government Code section 66323, subdivision (a)(4) may not be subject to size requirements imposed by other sections of the Government Code.² As this section does not impose any size requirements on these ADUs, the City must amend its Ordinance to note this exception.
6. Chapter 16.12.360.F.1 – *JADU Configuration* – The Ordinance states, “Junior accessory dwelling units will typically be smaller than an accessory dwelling unit, will be constructed within the walls of an existing single family residence...” In addition to this requirement, state law clarifies that, for purposes of this requirement, enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence.³ As a result, the City should amend this section of its Ordinance to better illustrate what is considered “part of the proposed or existing single-family residence.”

The City has two options in response to this letter.⁴ The City can either amend the Ordinance to comply with State ADU Law⁵ or adopt the Ordinance without changes and include findings in its resolution adopting the Ordinance that explain the reasons the City believes that the Ordinance complies with State ADU Law despite HCD’s findings.⁶ If the City fails to take either course of action and bring the Ordinance into compliance with State ADU Law, HCD must notify the City and may notify the California Office of the Attorney General that the City is in violation of State ADU Law.⁷

¹ California Residential Code, section R101.2

² Gov. Code, § 66323, subd. (b).

³ Gov. Code, § 66333, subd. (d).

⁴ Gov. Code, § 66326, subd. (c)(1).

⁵ Gov. Code, § 66326, subd. (b)(2)(A).

⁶ Gov. Code, § 66326, subd. (b)(2)(B).

⁷ Gov. Code, § 66326, subd. (c)(1).

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 Reshma Sen at Reshma.Sen@hcd.ca.gov if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Jamie Candelaria".

Jamie Candelaria
Section Chief
Housing Policy Development Division