

City of Hesperia

STAFF REPORT



DATE: October 21, 2025

TO: Mayor and Council Members

FROM: Rachel Molina, City Manager

BY: Nathan Freeman, Director of Development Services
Ryan Leonard, Principal Planner
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SUBJECT: Development Code Amendment DCA25-00003; Applicant: City of Hesperia;
Area affected: City-wide.

RECOMMENDED ACTION

It is recommended that the City Council introduce and place on first reading Ordinance No. 2025-05 approving Development Code Amendment DCA25-00003, modifying development standards associated with Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs).

BACKGROUND

On May 19, 2020, the City Council adopted Ordinance No. 2020-04 adopting development standards associated with ADUs. To date, the City Council has adopted four amendments to the existing ADU regulations to ensure compliance with State law.

Staff has identified required changes to the ADU Ordinance as well as other opportunities to improve the existing ordinance (as discussed below). The proposed Development Code Amendment will modify the City's existing ADU Ordinance to fully comply with the State ADU law.

An ADU is an additional detached or attached dwelling unit that provides complete independent living facilities for one or more people and is located on a lot with an existing or proposed primary dwelling unit. An ADU can be up to 1,200 square feet, is fully self-contained (including sanitation), and does not share internal access with the primary dwelling unit.

A JADU is not classified as a separate housing unit; therefore, it is permitted within any existing or proposed single-family residence. It must be entirely contained within the primary dwelling and may not exceed 500 square feet in size. Junior ADU's must include an efficiency kitchen, can have internal access to the primary dwelling unit, and can share sanitation facilities (such as a restroom) with the primary unit. The City's existing Development Code (specifically Section 16.12.360 of the Development Code) currently allows Junior ADUs and ADUs in all single-family, multi-family, and mixed-use zoning designations.

Planning Commission Review: On September 11, 2025, the Planning Commission deliberated and discussed the proposed Development Code Amendment. After discussion, the Planning Commission voted 4-0 (Chair, Roger Abreo was absent) to forward this item to the City Council with a recommendation for approval. No residents spoke either in favor of or in opposition to the code amendment at the public hearing.

ISSUES/ANALYSIS

The City of Hesperia received a comment letter from the California Department of Housing and Community Development's (HCD) on June 19, 2025, regarding the City's ADU Ordinance (Attachment 1). Their response provides findings and clarifications on several provisions that do not comply with State ADU and JADU laws under Government Code Sections 66310 - 66342. HCD directed the City to revise the ordinance to address the following issues:

1. Add specific language for the approval and denial of an ADU application.
2. Allow all types of ADU combinations including a converted ADU, a detached new-construction ADU and a JADU on single-family lots for a total of up to three ADUs on single family lots.
3. Increase the allowable number of detached ADUs on multi-family lots to up to eight for existing or proposed multi-family buildings.
4. Clarify the applicable building code for ADUs.
5. Remove the maximum size restrictions for the conversion of ADUs within single-family dwellings and detached ADUs within multi-family dwellings.
6. Clarify the language for conversion of JADUs, which may be created in enclosed areas like attached garages.

The City proposes the following amendments to Section 16.12.360 of the Development Code, pertaining to ADUs, in response to HCD's findings, except for Comment No. 2 (regarding ADU combinations) and Comment No. 5 (regarding removal of maximum size restrictions).

Section 16.12.360, subdivision (C)(b) will be amended to include specific language stating that the City shall either "approve or deny" an application for an ADU or JADU within sixty (60) days of receiving a complete application, in compliance with Government Code section 66317. This revision replaces existing language that states the City will "act on" such applications, ensuring consistency with state law requirements.

The City has elected not to amend the Ordinance in response to comment No. 2, which recommends explicit authorization for all combinations of ADUs and JADUs on single-family residential lots and up to a total of three ADUs on single-family lots. Government Code Section 66323(a) (formerly subsection (e)(1) of Government Code Section 65852.2) provides that the City shall "ministerially approve an application ... to create any of the following." It does not say "all of the following," nor does it say, "one or more of the following," nor is there an "and" after the final item to indicate inclusivity. A plain reading does not require the inference HCD contends the law requires. Sections 66323(a)(1) and (a)(2) together indicate that applicants are entitled to ministerial approval for only one ADU and one JADU per single-family lot. Section (a)(2) specifically allows an ADU under that subsection to be combined with a JADU under (a)(1), not another ADU, which limits applicants to one ADU and one JADU rather than multiple ADUs. HCD's interpretation that "any" in Section 66323 allows approval of all combinations disregards this caveat and renders the legislature's language meaningless. The statute's structure and word choice show the intent was not to compel approval of two ADUs plus a JADU, but rather to allow ministerial approval of a single ADU and JADU combination. In addition, HCD's interpretation is inconsistent with the legislative history for Assembly Bill 68 from 2019 (AB68), which is the bill where the Section 66323 ADUs were originally added to California law. In the various legislative summaries related to AB68, the intent was to allow one attached ADU or one detached ADU. HCD's current interpretation is also inconsistent with HCD's own previous interpretation of this language. In December 2020, HCD published an ADU Handbook that addressed this exact issue and stated that these options could not be combined, directly contradicting the position HCD subsequently has taken, even though the statutory language did not change. Considering these clear contradictions, HCD's interpretation of state ADU law on this issue would not receive

deference in state court. Case law is clear that when a state agency flatly contradicts itself, and when its current interpretation is not long-standing, its interpretation of state law is not entitled to deference. (*Kaanaana v. Barrett Bus. Servs., Inc.*, 11 Cal. 5th 158, 178 (2021); *State Bldg. & Constr. Trades Council of California v. Duncan*, 162 Cal. App. 4th 289, 303 (2008).) The Ordinance will retain its existing limitations accordingly, the City affirms that Hesperia Municipal Code Sections 16.12.360 D.2. and F.2. are compliant as adopted and respectfully disagree with HCD's Finding.

Section 16.12.360, subdivision (D)(3)(b) will be amended to be compliance with Government Code section 66323, which will allow up to eight (8) detached ADUs on lots containing existing multi-family dwellings, not to exceed the total number of existing units.

Section 16.12.360, subdivision (D)(11) will be amended to specify that the design and construction of all ADUs and JADUs within single-family or multi-family dwellings must comply with the California Residential Code and the California Building Code. This revision will ensure clarity for property owners and developers regarding applicable construction requirements for both ADUs and JADUs.

Section 16.12.360, subdivision (D)(12) will be added to prohibit ADUs from converting enclosed garages or carports that are required to meet the minimum parking standards for existing or proposed multi-family dwellings, unless permitted by the Government Code. This revision ensures that the City's regulations align with current state law for multi-family properties while maintaining compliance with local parking requirements.

The City has elected not to amend the Ordinance in response to comment No. 5, which recommends removal of maximum size restrictions for the conversion of ADUs within single-family dwellings and detached ADUs with multi-family dwellings. Though the City has elected not to remove the maximum size restrictions, the City has added a new Subdivision (D)(13) to reflect the City's intent to ministerially approve ADUs meeting the requirements of Government Code Section 66323. The City believes this approach is justified for a few reasons. First, while HCD's interpretation of Section 66323 is one possible interpretation, it is not binding legal authority on local agencies and results in an illogical result. For example, HCD's interpretation would arguably allow a property owner to build an ADU of unlimited size, subject only to certain height limitations and 4-foot side and rear setback limits, which could conceivably result in an ADU that is larger than the primary residence on the property. Additionally, under a hyper technical reading of Section 66323, the City could arguably impose an 800 square foot maximum square foot limitation on the ADUs contemplated under Section 66323, under the rationale that an 800 square foot limitation on the total area is a development standard authorized for detached single-family ADUs under Subsection 66323(b). Based on such a hyper technical reading, the City's maximum square foot limitation of 1,200 square feet would be less restrictive than the 800 square foot limitation the City could impose. Lastly, by adding in the new Subdivision (D)(13), the City has formalized its intent to comply with the approval requirements of Section 66323, as interpreted by the City. This revision preserves the City's desire to maintain a total area limitation on ADUs, subject to the requirements of the Government Code, as it now exists or may be amended, and eliminates the need for further revisions to the City's ADU Ordinance if a different interpretation is eventually made by California courts.

Section 16.12.360, subdivision (F)(1) will be amended to state that enclosed uses within a single-family residence, such as attached garages, are considered part of the proposed or existing single-family residence for the purpose of constructing a JADU. This clarification aligns the Ordinance with Government Code section 66333, subdivision (d) and provides precise guidance to applicants.

For reference, attached are red-line strikeouts illustrating the changes to the Ordinance in comparison to the City's existing ADU regulations.

Environmental: Approval of the Development Code Amendment is exempt from the requirements of the California Environmental Quality Act per Section 15061(b)(3), where it can be seen with certainty that there is no significant effect on the environment. The proposed Development Code Amendment is also exempt from the requirements of the California Environmental Quality Act by Section 16.12.415(B)(10) of the City's CEQA Guidelines, as a Development Code Amendment is exempt if it does not propose to increase the density or intensity allowed in the General Plan. According to Government Code 65852.2, ADUs do not count towards the allowable density, and are a residential use consistent with the existing General Plan and zoning designation. Additionally, approval of ADUs is a ministerial activity and exempt from application of CEQA in accordance with Section 21080 of the Public Resources Code and Section 15300.1 of the State CEQA Guidelines.

Conclusion: The Ordinance is consistent with the goals, policies and objectives of the General Plan and will bring the City's ADU regulations into compliance with State law.

CITY GOAL SUPPORTED BY THIS ITEM

Future Development - Facilitate balanced growth to ensure cohesive community development and pursue economic development.

FISCAL IMPACT

There are no fiscal impacts identified with this action.

ALTERNATIVE(S)

1. Provide alternative direction to staff.

ATTACHMENT(S)

1. Ordinance 2025-05
2. Exhibit "A" – Amended language for DCA
3. HCD Comment Letter
4. September 11, 2025, Planning Commission Staff Report