ORDINANCE NO. 2025-05

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HESPERIA, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL ADOPT A DEVELOPMENT CODE AMENDMENT, MODIFYING DEVELOPMENT STANDARDS ASSOCIATED WITH ACCESSORY DWELLING UNITS (ADUs) AND JUNIOR ACCESSORY DWELLING UNITS (JADUs) (DCA25-00003).

WHEREAS, on January 5, 1998, the City Council of the City of Hesperia adopted Ordinance No. 250, thereby adopting the Hesperia Municipal Code; and

WHEREAS, on May 19, 2020, the City Council adopted Ordinance No. 2020-04 establishing development standards associated with Accessory Dwelling Units (ADUs); and

WHEREAS, on June 1, 2021, the City Council adopted Ordinance No. 2021-01 modifying various sections of the ADU Ordinance for the purpose of providing added clarity and ensuring consistency with State requirements; and

WHEREAS, on August 16, 2022, the City Council adopted Ordinance No. 2022-13 modifying various sections of the ADU Ordinance to be consistent with State requirements; and

WHEREAS, on November 19, 2024, the City Council adopted Ordinance No. 2024-13 modifying various sections of the ADU Ordinance to be consistent with State requirements; and

WHEREAS, on May 6, 2025, the City Council adopted Ordinance No. 2025-01 modifying various sections of the ADU Ordinance to be consistent with State requirements; and

WHEREAS, the City proposes additional amendments to Section 16.12.360 of the City of Hesperia Development Code, pertaining to Accessory Dwelling Units (ADUs) (the "ADU Ordinance"), as further set forth in Exhibit "A" attached hereto and incorporated herein by reference, and finds that the amendments comply with Government Code Sections 66310 through 66342; and

WHEREAS, the amendments to the ADU Ordinance set forth in Exhibit "A" are proposed in response to findings issued by the California Department of Housing and Community Development (HCD) in a letter dated June 19, 2025; and

WHEREAS, the City has considered the findings in HCD's letter and has determined not to amend the ADU Ordinance in response to Comment No. 2, relating to the types and total number of ADU combinations allowed, and Comment No. 5, relating to the removal of maximum size restrictions for specific types of ADUs; and

WHEREAS, the City of Hesperia has elected not to amend the Ordinance in response to HCD Comment No. 2, which recommends explicit authorization for all combinations of ADUs and JADUs on single-family residential lots for a total of three units, and in support of such election the City Council further finds as follows pursuant to Government Code Section 66326(b)(2)(B):

A. There is no case law addressing this issue, so there is no authoritative interpretation of Government Code Section 66323 (formerly subsection (e)(1) of Government Code Section 65852.2) to support HCD's position.

B. Government Code Section 66323(a) (formerly subsection (e)(1) of Government Code Section 65852.2) says 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 that the list is inclusive. A plain reading does not require the inference HCD contends the law requires.

C. Section 66323(a)(1) requires a local agency to ministerially approve an application for a building permit within a residential or mixed-use zone to create one accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if each of the listed factors apply. Section 66323(a)(2) requires a local agency to ministerially approve an application for a building permit within a residential or mixed-use zone to create one detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling, and permits a local agency to impose certain conditions listed in the statute. This section also specifically notes that an ADU in this section "may be combined with a junior accessory dwelling unit described in paragraph (1)".

B. In concluding that the City's ordinance does not comply, HCD interprets the phrase "any combination" in Section 66323(a) to mean that a property owner may be entitled to all of the ADU combinations contemplated in Section 66323 (a)(1) and (2) as opposed to either the combination of units allowed in Subsection (a)(1) or those allowed in Subsection (a)(2). That conclusion ignores the caveat in Section 66323(a)(2) identified above. If the intent of this section is to permit "any" combination of the ADUs enumerated, it would be unnecessary for the Legislature to include the caveat. The language of Subsection (a)(1) and Subsection (a)(2), taken together, indicate that an applicant may only receive ministerial approval for one ADU and one JADU. This aligns with the specific provision allowing an ADU approved under (a)(2) to be combined only with a JADU approved under (a)(1), not with another ADU. An applicant is only entitled to ministerial approval of an ADU under one section or the other, not both.

C. HCD's findings also ignore the plain text of the statute. The Legislature did not need to use the terms "or" or "one of" to set limits on what ADUs shall be ministerially approved. The Legislature included those limits based on the (a)(2) caveat. The statute was not intended to be used to justify compelling ministerial approval of a combination of two ADUs and one JADU. Otherwise, the specific language about combining an (a)(1) JADU with an (a)(2) ADU would be meaningless. Applying HCD's own logic, the omission of the words "each" or "all" from the statute indicates that the Legislature only intended to permit ministerial approval of one option out of the menu of four options, not all of them together.

D. The City's interpretation of Section 66323 is also consistent with the legislative history of Section 66323, as originally adopted (before renumbering) in Assembly Bill 68. Multiple legislative analyses prepared by the California Legislature provide that the intent was to allow, in addition to the contemplated JADU, either one attached single-family ADU or one detached single family, not one of each. For example, the AB 68 bill analysis dated April 1, 2019 from the Assembly Committee on Housing and Community Development, to permit "On a lot with a proposed or existing single-family home, allow: (i) one ADU that is substantially within a proposed or existing structure or the same footprint as an existing

structure; or (ii) one detached ADU that is substantially within a proposed or existing structure or the same footprint as an existing structure." Additionally, the most recent AB 68 bill analysis dated September 9, 2019 from the Senate Floor Amendments, stated " This [AB 68] bill instead requires ministerial approval of one ADU and one JADU per lot that is within an existing structure, as specified; one detached ADU within a proposed or existing structure or the same footprint as the existing structure, along with one JADU, as specified; multiple ADUs within existing multifamily structures; or two detached ADUs on a multifamily lot, as specified." Lastly, 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.

E. In light of 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 most reasonable reading of the statute indicates the applicant is entitled to ministerial approval of one ADU and a JADU. Therefore, the City respectfully disagrees with HCD's findings and believes Hesperia Municipal Code sections 16.12.360 D.2. and F.2. are compliant as adopted.

WHEREAS, the City of Hesperia has elected not to amend the Ordinance in response to HCD Comment No. 5, which recommends the removal of maximum size restrictions for the conversion of ADUs within single-family dwellings and detached ADUs within multi-family dwellings as being in violation of the requirement that ADUs meeting the requirements of Section 66323 be ministerially approved and not subject to additional development standards imposed by the local agency and in support of that election, the City Council finds as follows:

A. In lieu of removing the maximum size restrictions, the City has added a new Subdivision (D)(13) to the ADU Ordinance to reflect the City's intent to ministerially approve ADUs meeting the requirements of Government Code Section 66323. The City finds 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.

B. 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.

WHEREAS, the City Council finds that the proposed amendments relating to Accessory Dwelling Unit regulations are necessary updates to bring the City's Development Code into compliance with State law; and

WHEREAS, the proposed Development Code Amendment is exempt from the California Environmental Quality Act (CEQA) per Section 15061(b)(3), where it can be seen with certainty that there is no significant effect on the environment; the proposed Amendment is also exempt from the requirements of CEQA by Section 16.12.415(B)(10) of the City's CEQA Guidelines, as the Amendment is exempt if it does not propose to increase the density or intensity allowed in the General Plan; and approval of ADUs is a ministerial activity and exempt from the application of CEQA in accordance with Section 21080 of the Public Resources Code and Section 15300.1 of the state CEQA Guidelines; and

WHEREAS, on September 11, 2025, the Planning Commission of the City of Hesperia conducted a duly noticed public hearing pertaining to the proposed amendment and concluded said hearing on that date; and

WHEREAS, on October 21, 2025, the City Council of the City of Hesperia conducted a duly noticed public hearing pertaining to the proposed Amendment and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF HESPERIA DOES ORDAIN AS FOLLOWS:

Section 1. The City Council hereby specifically finds that all the facts and recitals set forth above in this Ordinance are true and correct and incorporated herein by this reference.

Section 2. Based upon substantial evidence presented to the City Council, including written and oral staff reports, the City Council specifically finds that the proposed Ordinance is consistent with the goals and objectives of the adopted General Plan.

Section 3. The proposed development code amendment is necessary to bring the City's Development Code into compliance with State law.

Section 4. Based on the findings and conclusions set forth in this Ordinance, the City Council hereby adopts Development Code Amendment DCA25-00003, amending the Accessory Dwelling Unit regulations as shown on Exhibit "A."

Section 5. This Ordinance shall take effect thirty (30) days from the date of adoption.

Section 6. The City Clerk shall certify to the adoption of this Ordinance and shall cause the same to be posted in three (3) public places within the City of Hesperia pursuant to the provisions of Resolution No. 2007-101.

ADOPTED AND APPROVED on this 4th day of November 2025.

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Allison Lee, Mayor

ATTEST:

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Jessica Giber, Assistant City Clerk