

*City of Hesperia*  
**STAFF REPORT**

**DATE:** July 14, 2022

**TO:** Planning Commission

**FROM:** Rachel Molina, Assistant City Manager

**BY:** Ryan Leonard, Senior Planner  
Yuying Ma, Assistant Planner

**SUBJECT:** Development Code Amendment DCA22-00003; Applicant: City of Hesperia; Area affected: City-wide

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**RECOMMENDED ACTION**

It is recommended that the Planning Commission adopt Resolution No. PC-2022-10 recommending that the City Council introduce and place on first reading an ordinance approving DCA22-00003, modifying development standards associated with Accessory Dwelling Units (ADUs).

**BACKGROUND**

On May 19, 2020 the City Council adopted Ordinance No. 2020-04 adopting development standards associated with Accessory Dwelling Units (ADUs). 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 to be consistent with State requirements.

In January 2022 the California Department of Housing and Community Development (HCD) requested copies of the City's existing ADU Ordinance. On June 3, 2022, HCD provided written comments to the City regarding the existing ADU Ordinances. The adopted ADU Ordinances address many of the State's statutory requirements, however certain aspects of the ADU Ordinances must be revised to comply with State ADU Law.

**ISSUES/ANALYSIS**

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.

The ADU Ordinance (specifically section 16.12.360 of the Development Code) currently allows ADU's in the agricultural, single family, multi-family, and mixed-use zoning designations. However, it was discovered that Section 16.16.085 of the Municipal Code is inconsistent with the ADU Ordinance because it incorrectly lists ADUs as a prohibited use in the R3 zoning designation. Therefore, DCA22-00003 will modify Section 16.16.085 of the Municipal Code to clarify that ADUs are an allowed use in the multifamily zoning designations.

Development Code Amendment DCA22-00010 will also clarify that an ADU may be allowed on a lot with an existing or proposed “primary residence” as opposed to a “single family residence.” This will ensure that references to multifamily buildings are not omitted in the ADU Ordinance.

DCA22-00010 will amend the existing ADU Ordinance to remove two regulations that are considered to be subjective terms. The existing ADU Ordinance currently requires that “the entrance to an attached accessory dwelling unit shall be separate from the entrance to the primary unit and shall be installed in a manner as to eliminate an obvious indication of two units in the same structure.” HCD determined that “obvious indication” could be a subjective term. Therefore, this requirement will be removed.

In addition, the existing ADU Ordinance states that an ADU “shall not cause excessive noise, traffic, or other disturbances to the existing neighborhood or result in significantly adverse impacts on public services and resources.” As with above, the terms “excessive noise, traffic or other disturbances” and “significantly adverse impacts” were determined to be subjective terms and will be removed. However, the City may continue to use the adequacy of water and sewer services to determine where ADUs may be permitted.

**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.

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

## **FISCAL IMPACT**

None.

## **ALTERNATIVE(S)**

1. Provide alternative direction to staff.

## **ATTACHMENT(S)**

1. Resolution No. PC-2022-10, with Exhibit “A”

# ATTACHMENT 1

## RESOLUTION NO. PC-2022-10

### **A RESOLUTION OF THE PLANNING COMMISSION 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) (DCA22-00010)**

**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**, the City proposes to amend Section 16.12.360 of the City of Hesperia Development Code regulations, which pertain to Accessory Dwelling Units (ADUs); and

**WHEREAS**, the proposed Development Code Amendment will modify Section 16.16.085 of the Municipal Code to state that an ADU is an allowed use in the R3 zoning designation; and

**WHEREAS**, the proposed Development Code Amendment will modify Section 16.12.360 (E)(1) to clarify that an ADU may be allowed on a lot with an existing or proposed “primary residence” as opposed to a “single family residence”; and

**WHEREAS**, the proposed Development Code Amendment will modify Section 16.12.360 (E) of the Municipal Code to remove two regulations that are considered to be subjective terms; the term “obvious indication” of two units will be removed and the terms “excessive noise, traffic or other disturbances” and “significantly adverse impacts” and will be removed; and

**WHEREAS**, the proposed Development Code Amendment will modify Section 16.12.360 of the City of Hesperia Development Code regulations to add the approval time of 120 days; 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 the California Environmental Quality Act 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

**WHEREAS**, on July 14, 2022, the Planning Commission of the City of Hesperia conducted a duly noticed public hearing pertaining to the proposed Amendments and concluded said hearing on that date; and

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

**NOW THEREFORE**, BE IT RESOLVED BY THE CITY OF HESPERIA PLANNING COMMISSION AS FOLLOWS:

Section 1. The Planning Commission hereby specifically finds that all of the facts set forth in this Resolution are true and correct.

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

Section 3. Based on the findings and conclusions set forth in this Resolution, this Commission hereby recommends adoption of Development Code Amendment DCA22-00003, amending the Accessory Dwelling Unit regulations as shown on Exhibit "A."

Section 4. That the Secretary shall certify to the adoption of this Resolution.

**ADOPTED AND APPROVED** on this 14<sup>th</sup> day of July 2022.

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Roger Abreo, Chair, Planning Commission

ATTEST:

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Maricruz Montes, Secretary, Planning Commission

# EXHIBIT “A”

The following are modifications to Article X of Chapter 16.12 (additions are in underlined red text and deletions are shown with ~~red and strikethrough~~):

## **16.12.360 Accessory dwelling units.**

- A. Purpose. The purpose of these provisions is to establish procedures for permitting an accessory dwelling unit (ADU); to implement state law requiring consideration for such uses.
- B. Definitions.
  - a. "Accessory dwelling unit" or "ADU" means an additional detached or attached dwelling unit which provides complete independent living facilities for one or more persons and is located on a lot with an existing or proposed primary residence. The unit shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the primary unit is situated. An accessory dwelling unit also includes the following:
    - i. An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.
    - ii. A manufactured home, as defined in Section 18007 of the Health and Safety Code.
  - b. "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.
  - c. "Junior accessory dwelling unit" means a unit that is no more than 500 square feet in size and contained entirely within an existing single-family structure. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.
- C. Application Procedure—Accessory Dwelling Units. Application for a permit to construct an accessory dwelling unit shall be made by pursuant to the provisions and limitations of this article.
  - a. The review procedure shall be administrative review without notice (ministerial), pursuant to the provisions of Section 16.12.005(A)(3).
  - b. The City shall act on the application to create an ADU or a Junior ADU within 120 days from the date that the City receives a completed application, unless either:
    - a) The Applicant requests for a delay, in which case the 120 day time period is tolled for the period of the requested delay, or

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b) An application of an Accessory Dwelling Unit or a Junior Accessory Dwelling Unit is submitted with a permit application to create a new primary residence on the lot, the City may delay acting on the permit application for the Accessory Dwelling Unit or the Junior Accessory Dwelling until the City acts on the permit application to create the primary residence. The application of an Accessory Dwelling Unit or a Junior Accessory Dwelling Unit is still considered ministerially without discretionary review or a public hearing.

c. Approval of a permit to construct an accessory dwelling unit shall be valid for a period not to exceed thirty-six (36) months.

D. Requirements for Approval.

1. An accessory dwelling unit may only be permitted on lots that are zoned for agricultural, single family, multi-family, or mixed uses and that contain an existing or proposed single-family or multi-family dwelling.
2. Accessory dwelling units are exempt from the density limitations of the General Plan and subject to the following:
  - a. Lots with an existing or proposed single-family residence may be permitted one (1) accessory dwelling, and one (1) junior accessory dwelling unit (see Section 16.12.360 F for additional regulations pertaining to junior accessory dwelling units).
  - b. Lots with existing multifamily units may convert non-habitable space within an existing multifamily structure into accessory dwelling units. The number of these types of units shall be limited to -one (1) accessory dwelling or up to 25 percent of the existing multifamily dwelling units, whichever is greater. In addition, no more than two (2) detached accessory dwelling units may be permitted. A detached accessory dwelling may be converted from non-habitable space, or newly constructed.
3. An accessory dwelling unit shall be located on the same lot as the proposed or existing primary dwelling.
4. The correction of a nonconforming zoning condition that would result in a physical improvement on the property shall not be a condition of approval for an accessory dwelling unit.
5. On lots with an existing or proposed single family residence, the primary dwelling unit or accessory dwelling unit on the property shall be owner-occupied. (This provision is suspended for all permits until January 1, 2025, unless otherwise amended by California Government Code 65852.2).
6. The accessory dwelling unit shall provide complete and independent living facilities.
7. The accessory dwelling unit shall not be sold separately and may be rented for periods of not less than 30 days.
8. The accessory dwelling unit shall have adequate water supply pursuant to specifications of the Uniform Plumbing Code.
9. In compliance with the State of California Lahontan Regional Water Quality Control Board, lots that are not connected to sewer facilities shall be a minimum of one gross acre in size or install an approved Supplemental Treatment Septic System.

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10. The design and construction of each ADU shall conform to all applicable provisions of the Building Code. The ADU shall comply with all provisions of the Code pertaining to the adequacy of water, sewer, electrical, drainage, and fire and emergency services to the property on which the ADU will be located as well as all applicable codes pertaining to building, fire, health, and/or safety.

E. Design and Development Standards—Accessory Dwelling Units.

1. The accessory dwelling unit may be either attached to or detached from an existing or proposed ~~single-family primary~~ residence, or converted from an existing accessory building, garage, storage area, or other similar non-habitable area. An accessory dwelling may be converted from non-habitable space within, or detached from, an existing or proposed multi-family structure.
2. A detached accessory unit shall not exceed 1,200 square feet per structure of livable floor area (excludes garage and any accessory structure) on any parcel. Accessory dwelling units attached to the principal unit may be up to fifty (50) percent of the area of the principal unit, up to a maximum of one thousand (1,000) square feet, except that if the principal unit has a floor area of 1,600 square feet or less, an attached accessory dwelling unit shall conform to the provisions of Section 16.20.360(E)(6), below. The area of an accessory dwelling unit is in addition to and shall not be considered as part of the allowable accessory building area authorized under Article X of Chapter 16.20. No accessory dwelling unit shall be less than one hundred and fifty (150) square feet in area. Further, a recreational vehicle, does not qualify for use as an accessory dwelling unit.
3. The entrance to an attached accessory dwelling unit shall be separate from the entrance to the primary unit and ~~shall be installed in a manner as to eliminate an obvious indication of two units in the same structure~~ the separate entrance shall be located on the side or rear of the structure and whenever possible, located facing toward the interior yard areas.
4. For new attached or detached accessory dwelling units, a minimum four-foot side yard and four-foot rear yard setback is allowed. The front yard and street side yard standards for the primary unit shall apply to the accessory dwelling unit. In addition, detached accessory dwelling units shall be located to the rear of the primary dwelling unit.
5. No setback shall be required for the conversion of existing living area, conversion of an existing accessory structure, or for a new structure that is constructed in the same location and to the same dimensions as an existing structure.
6. The accessory dwelling unit shall be constructed in accordance with minimum standards for single-family residential uses on individual lots as specified in Section 16.20.160, unless otherwise specified herein.
7. No provisions within this Section, including lot coverage or legal nonconformity, shall preclude either an attached or detached 800 square foot accessory dwelling unit that is at least sixteen (16) feet in height with four-foot side yard and rear yard setbacks, and that is constructed in compliance with all other development standards
8. At least one covered or uncovered parking space for the accessory dwelling unit shall be provided by a minimum interior size of nine feet in width and nineteen (19) feet in depth. Parking can be tandem on an existing driveway. The City shall not impose parking standards for an accessory dwelling unit if the accessory dwelling unit is

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located within one-half mile of public transit, when the accessory dwelling unit is part of the proposed or existing primary residence or an existing accessory structure, when on-street parking permits are required but not offered to the occupant of the accessory dwelling unit, or when there is a care share vehicle located within one block of the accessory dwelling unit. No setback shall be required for an existing garage that is converted to an accessory dwelling unit, and 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 constructed above a garage.

9. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, those off-street parking spaces do not need to be replaced.
10. The accessory dwelling unit shall be compatible with the design of the primary unit and the surrounding neighborhood in terms of landscaping, scale, height, length, width, bulk, lot coverage, and exterior treatment, ~~and shall not cause excessive noise, traffic, or other disturbances to the existing neighborhood or result in significantly adverse impacts on public services and resources.~~
11. The construction of an accessory dwelling unit shall not be considered when calculating minimum distance requirements for animal uses on the subject lot or on adjacent lots.

F. Junior Accessory Dwelling Units.

1. Purpose-This section provides standards for the establishment of junior accessory dwelling units, an alternative to the standard accessory dwelling unit. 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, and requires owner occupancy of the single family residence where the unit is located.
2. Development Standards- Junior accessory dwelling units shall comply with the following standards:
  - a) Lots with an existing or proposed single family residence may be permitted one (1) accessory dwelling unit and one (1) junior accessory dwelling unit.
  - b) In compliance with the State of California Lahontan Regional Water Quality Control Board, lots that are not connected to sewer facilities shall be a minimum of one gross acre in size or install an approved Supplemental Treatment Septic System.
  - c) A junior accessory dwelling unit shall not exceed 500 square feet in size and shall be contained entirely within a single family residence. However, an additional 150 square foot expansion beyond the physical dimensions of the existing structure is permitted strictly to accommodate ingress and egress to the junior accessory dwelling unit.
  - d) The junior accessory dwelling unit shall include a separate entrance from the main entrance to the proposed or existing single family residence.
  - e) The junior accessory dwelling unit must include an efficiency kitchen that includes a cooking facility with appliances, a food preparation counter, and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.



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- f) The junior accessory dwelling unit may have a bathroom or share with the proposed or existing single family residence.
  - g) Additional parking shall not be required.
  - h) A deed restriction, in a form to be approved and provided by the City, must be recorded filed with the City, and must include the following stipulations: i) prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single family residence; ii) restriction on the size and attributes of the junior accessory dwelling unit; iii) if the unit is rented, the unit shall not be rented for a period of less than 30 consecutive calendar days; and iv) owner occupancy of one of the units on-site is required, unless the owner is a governmental agency, land trust, or housing organization. These restrictions shall run with the land.

(Ord. 2003-05 § 4 (part), 2003; Ord. 299 § 4 (Exh. A § 3 (part)), 2000; Ord. 250 (part), 1997; Ord. 192 Exh. A (§ 83.10.020), 1994)

(Ord. No. 2009-08, § 3(Exh. A), 10-20-09; Ord. No. 2012-14, § 3(Exh. A), 8-7-12; Ord. No. 2017-12 , § 3(Exh. A), 6-20-17; Ord. No. 2020-04 , § 3(Exh. A), 5-19-20; Ord. No. 2021-01 , 3(Exh. A), 6-1-21)

The following are modifications to Article IV of Chapter 16.16:

**16.16.085 Residential and ancillary uses.**

Residential and Ancillary Uses	R1	R3 <sup>1</sup>	RR	A1	A2	See Section(s)
A. Single-family dwelling	P	P	P	P	P	
B. Multiple-family dwellings	NP	S	NP	NP	NP	
C. Accessory dwelling unit	A	<del>NP</del> <u>A</u>	A	A	A	16.12.360
D. Guest house <sup>2</sup>	A	NP	A	A	A	
E. Home Occupation	A	A	A	A	A	Chapter 5.44 (Municipal Code)
F. Board and room, not to exceed two persons, without kitchen privileges	A	A	A	A	A	
G. Accessory buildings and structures <sup>3</sup>	A	A <sup>4</sup>	A	A	A	16.20.385—16.20.425
H. Buildings or structures to store agricultural vehicles, food, and equipment (i.e. barn or outbuilding)	A	NP	A	A	A	16.20.385—16.20.425
I. Buildings or structures to keep animals (i.e. stable, corral, pen or coop)	A	NP	A	A	A	16.16.115 and 16.20.385—16.20.425
J. Small, community, or handicapped residential care facilities, senior housing, intermediate care of six or less and licensed by the state	P	P	P	P	P	
K. Large or community residential care facilities, senior housing, intermediate care of seven or more and licensed by the state and Single Room Occupancy Development (SRO) <sup>7</sup>	C	C	C	C	C	
L. Group homes not licensed by the state with six or more residents	C	C	C	C	C	
M. Supportive housing and transitional housing	S	S	S	S	S	16.08.332 and 16.08.333
N. Parking of commercial vehicles, as defined in the California Vehicle Code	A	NP	A	A	A	16.20.090(H)
O. Mobile home parks	S	S <sup>5</sup>	S	S	S	16.28.010—16.28.070
P. Hotels and Motels	NP	S <sup>6</sup>	NP	NP	NP	
Q. Small family day care to 12 or fewer children	A	A	A	A	A	

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R. Large family day care to 13 or more children	S	S	S	S	S	
S. Other similar uses, as interpreted by the Development Services Director or his/her designee	P	P	P	P	P	

Notes:

1. Prohibited uses shall be uses not specifically authorized or determined by the development services director or his/her designee to be detrimental to public welfare.
2. Guest house shall not exceed a building area of four hundred ninety-nine (499) square feet and shall not include kitchen facilities.
3. Accessory structures and uses shall be customarily incidental to any permitted uses when located on the same site with the main building and use.
4. Shall include recreational vehicle parks.
5. Business may be conducted for the convenience of the residents of the building; there shall not be an entrance to such place of business, except from the inside of the building; and no sign visible from the outside advertising such business.
6. SRO developments are subject to Section G 4.15 of the Main Street and Freeway Corridor Specific Plan—Standards for Single Room Occupancy for all residential zones.

(Ord. No. 2011-10, § 3(Exh. A), 8-16-11; Ord. No. 2014-02, § 3(Exh. A), 2-18-14 ; Ord. No. 2021-01 , 3(Exh. A), 6-1-21)