Attachment 4

City of Hesperia
STAFF REPORT

DATE: September 11, 2025

TO: Planning Commission

FROM: Nathan R. Freeman, Director of Development Services
Ryan Leonard, Principal Planner

BY: Edgar Gonzalez, Senior Planner

SUBJECT: Development Code Amendment DCA25-00003; Applicant: City of Hesperia; Area affected: City-wide

---

RECOMMENDED ACTION

It is recommended that the Planning Commission adopt Resolution No. PC-2025-12 recommending that the City Council introduce and place on first reading an ordinance approving DCA25-00003, modifying development standards associated with Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (Junior ADUs).

BACKGROUND

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

Staff have identified the 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 Accessory Dwelling Unit (ADU) is 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 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 Junior Accessory Dwelling Unit (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.

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 Accessory Dwelling Unit (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 Codes 66310 - 66342. HCD has directed the City to revise the ordinance to address the following issues:

1. Add specific language for 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 multifamily lots to up to eight for existing or proposed multifamily buildings.
4. Clarification on the type of building code that is applicable to ADUs.
5. Removal of maximum size restrictions for the conversation of ADUs within single-family dwellings and detached ADUs with multi-family dwellings.
6. Clarification on the language for conversation 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 City of Hesperia Development Code, pertaining to Accessory Dwelling Units (ADUs) in response to findings issued by the California Department of Housing and Community Development (HCD), except for comment No. 2 relating to the types of ADU combinations allowed and comment No. 5 relating to the removal of maximum size restrictions for specific types of ADUs.

Section 16.12.360, subdivision (C)(b) will be amended to include specific language to state 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) 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. Section 66323(a)(1) and (a)(2) together indicate that applicants are entitled to ministerial approval for only one accessory dwelling unit (ADU) and one junior accessory dwelling unit (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, it is clear that 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 in 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 prohibited 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 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.

CITY GOAL SUPPORTED BY THIS ITEM

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

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.

FISCAL IMPACT

None.

ALTERNATIVE(S)

1. Provide alternative direction to staff.

ATTACHMENT(S)

1. HCD Comment Letter
2. Resolution No. PC-2025-12, with Exhibit "A"

ATTACHMENT 2

RESOLUTION NO. PC-2025-12

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) 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 adopting 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 to be consistent 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 Planning Commission 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 accessor 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 one attached single-family ADU or one detached single family ADU (plus the contemplated JADU), not one of each. 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 removal of maximum size restrictions for the conversion of ADUs within single-family dwellings and detached ADUs with 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 Planning Commission 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 Planning Commission 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 Development Code Amendment 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 the facts and recitals 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 DCA25-00003, 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 11th day of September 2025.

_____
Roger Abreo, Chair, Planning Commission

ATTEST:

_____
Maricruz Montes, Secretary, Planning Commission

Green Sheet Item # 5 Information Updated After Posting the Agenda.

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 this section is to expand the variety of housing opportunities in the City of Hesperia by implementing State Government Code Sections 66310-66342 as they pertain to accessory dwelling units and junior accessory dwelling units. Implementation of these regulations will ensure that accessory dwelling units and junior accessory dwelling units are located in areas where services are adequate to support them and that accessory dwelling units are designed and maintained as a compatible and integral part of the city's residential zoning districts.

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" or "JADU" means a unit that is no more than five hundred (500) square feet in size and contained entirely within an existing or proposed single-family structure. A junior accessory dwelling unit may include separate sanitation facilities or may share sanitation facilities with the existing structure. For the purposes of this section, enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence.

C. Application Procedure—Accessory Dwelling Units. Application for a permit to construct an accessory dwelling unit shall be made 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~~ approve or deny the application to create an ADU or a Junior ADU within sixty (60) days from the date that the city receives a completed application, unless either:

(i) The Applicant requests for a delay, in which case the sixty (60) day time period is tolled for the period of the requested delay, or

(ii) 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 Unit 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.

D. General Standards.

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. A Junior Accessory Dwelling unit may only be permitted on lots that are zoned for agricultural or single family and that contain an existing or proposed single-family dwelling.

3. 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 accessory dwelling, and one junior accessory dwelling unit (see Section 16.12.360 F for additional regulations pertaining to junior accessory dwelling units).

   b. Lots with existing multi-family units may convert non-habitable space within an existing multi-family structure into accessory dwelling units. The number of these types of units shall allow at least ~~be limited to~~ one accessory dwelling or up to twenty-five (25) percent of the existing multi-family dwelling units~~, whichever is greater. In addition, no more than two detached accessory dwelling units may be permitted.~~ A detached accessory dwelling may be converted from non-habitable space, or newly constructed.

   c. Multiple detached accessory dwelling units are allowed within multi-family lots in accordance with the following:

      (i) Within an existing multi-family development, up to a maximum of eight (8) detached ADUs may be constructed provided that the total number of ADUs does not exceed the number of existing units on the lot.

      (ii) Within a proposed multi-family development, up to a maximum of two (2) detached ADUs may be constructed.

4. An accessory dwelling unit shall be located on the same lot as the proposed or existing primary dwelling.

5. 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.

6. The accessory dwelling unit shall provide complete and independent living facilities.

7. The accessory dwelling unit shall not be used for a rental term of less than thirty (30) consecutive days.

8. The accessory dwelling unit may not be sold or conveyed separately from the primary dwelling unit unless all of the following apply:

   (i) The accessory dwelling unit was built or developed by a qualified nonprofit corporation. For the purposes of this section, a qualified nonprofit corporation means a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section

214.15 of the California Revenue and Taxation Code for properties intended to be sold to low-income families who participate in a special no-interest loan program.

(ii) There is an enforceable restriction on the use of the land on which the ADU is located pursuant to a recorded contract between the qualified buyer and the qualified nonprofit corporation. For the purposes of this section, a qualified buyer means very-low and low-income households as defined in Section 16.20.195.

(iii) The property is held pursuant to a recorded tenancy in common agreement that includes an allocation to each qualified buyer of an undivided, unequal interest in the property based on the size of the dwelling that each qualified buyer occupies: a repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the accessory dwelling unit or primary dwelling if the buyer desires to sell or convey the property: a requirement that the qualified buyer occupy the property as the qualified buyer's principal residence: and affordability restrictions on the sale and conveyance of the property that ensures the property will be preserved for very-low income or low-income housing for forty-five (45) years for owner-occupied housing and will be sold or resold to a qualified buyer.

(iv) A grant deed naming the grantor, grantee, and describing the property interests being transferred shall be recorded with the County. A Preliminary Change of Ownership Report shall be filed concurrently with the grant deed pursuant to Section 480.3 of the Revenue and Taxation Code.

(v) If requested by a utility providing service to the primary residence, the accessory dwelling unit has separate water, sewer, or electrical connection to that utility.

9. The accessory dwelling unit shall have adequate water supply pursuant to specifications of the Uniform Plumbing Code.

10. 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.

11. The design and construction of each ADU within single-family or multi-family dwellings shall conform to all applicable provisions of the California Residential Code and the California 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.

12. Unless prohibited by California Government Code Sections 66310-66342 an ADU shall not convert the required parking for an existing or proposed multi-family dwelling within an enclosed garage or carport without the concurrent replacement of the existing required parking elsewhere on the property in accordance with the size, placement, and design standards of the Development Code.

13. Notwithstanding any other provision in this Section 16.12.360, the City shall ministerially approve an application for a JADU and/or one or more ADUs if the proposed unit meets the requirements of Government Code Sections 66323.

E. Design and Development Standards—Accessory Dwelling Units.

1. The accessory dwelling unit may be either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure, or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling, including detached garages. 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 one thousand two hundred (1,200) square feet 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 one thousand six hundred (1,600) square feet or less, an attached accessory dwelling unit shall conform to the provisions of Section 16.12.360(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. Independent access to an attached accessory dwelling unit is required and shall not be located on the same wall plane elevation as the access to the primary dwelling.

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.

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 eight hundred (800) square-foot accessory dwelling unit with four-foot side yard and rear yard setbacks, and that is constructed in compliance with all other development standards

8. A detached accessory dwelling unit created on a lot with an existing or proposed single-family or multi-family dwelling may not exceed sixteen (16) feet in height. However, a detached accessory dwelling unit may be up to eighteen (18) feet in height if it is located within one-half mile walking distance of a major transit stop or a high-quality transit corridor, as those terms are defined in Section 21155 of the Public Resources Code. Furthermore, a detached accessory dwelling unit may be up to two additional feet in height to accommodate a roof pitch on the accessory dwelling unit that is aligned with the roof pitch of the primary dwelling unit. A detached accessory dwelling unit created on a lot with an existing or proposed multi-family dwelling that has more than one story above grade may not exceed eighteen (18) feet in height. An accessory dwelling unit that is attached to the primary dwelling may not exceed twenty-five (25) feet in height or exceed two stories.

9. 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.

10. 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.

11. The accessory dwelling unit shall be architecturally compatible with the design of the primary unit and shall match with the same colors and materials of the primary unit.

12. 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. For the purposes of this section, enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence.

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 accessory dwelling unit and~~ one junior accessory dwelling unit.

   b) For the purposes of providing service for water, sewer or power, including a connection fee, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit. Lots that are not connected to sewer facilities shall meet the Lahontan Regional Water Quality Control Board regulations pertaining to minimum septic tank capacity.

   c) A junior accessory dwelling unit shall not exceed five hundred (500) square feet in size and shall be contained entirely within a single family residence.

   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.

   f) The junior accessory dwelling unit may have a bathroom or share with the proposed or existing single family residence. If a permitted junior accessory dwelling unit does not include a separate bathroom, then an interior entry to the main living area shall be provided.

   g) A junior accessory dwelling unit shall not convert the required parking for the primary residential structure located within an attached garage without the concurrent replacement of the existing required parking within an enclosed garage

elsewhere on the property in accordance with the size, placement, and design standards of the Development Code.

h) A deed restriction, in a form to be approved and provided by the city, must be recorded and 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 thirty (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; Ord. No. 2022-13, § 3(Exh. A), 9-6-2022; Ord. No. 2024-13, § 3(Exh. A), 12-3-24; Ord. No. 2025-01, § 3(Exh. A), 5-20-25)

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 this section is to expand the variety of housing opportunities in the City of Hesperia by implementing State Government Code Sections 66310-66342 as they pertain to accessory dwelling units and junior accessory dwelling units. Implementation of these regulations will ensure that accessory dwelling units and junior accessory dwelling units are located in areas where services are adequate to support them and that accessory dwelling units are designed and maintained as a compatible and integral part of the city's residential zoning districts.

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" or "JADU" means a unit that is no more than five hundred (500) square feet in size and contained entirely within an existing or proposed single-family structure. A junior accessory dwelling unit may include separate sanitation facilities or may share sanitation facilities with the existing structure. For the purposes of this section, enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence.

C. Application Procedure—Accessory Dwelling Units. Application for a permit to construct an accessory dwelling unit shall be made 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 approve or deny the application to create an ADU or a Junior ADU within sixty (60) days from the date that the city receives a completed application, unless either:

(i) The Applicant requests for a delay, in which case the sixty (60) day time period is tolled for the period of the requested delay, or

(ii) 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 Unit 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.

D. General Standards.

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. A Junior Accessory Dwelling unit may only be permitted on lots that are zoned for agricultural or single family and that contain an existing or proposed single-family dwelling.

3. 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 accessory dwelling, and one junior accessory dwelling unit (see Section 16.12.360 F for additional regulations pertaining to junior accessory dwelling units).

   b. Lots with existing multi-family units may convert non-habitable space within an existing multi-family structure into accessory dwelling units. The number of these types of units shall allow at least one accessory dwelling or up to twenty-five (25) percent of the existing multi-family dwelling units. A detached accessory dwelling may be converted from non-habitable space, or newly constructed.

   c. Multiple detached accessory dwelling units are allowed within multi-family lots in accordance with the following:

      (i) Within an existing multi-family development, up to a maximum of eight (8) detached ADUs may be constructed provided that the total number of ADUs does not exceed the number of existing units on the lot.

      (ii) Within a proposed multi-family development, up to a maximum of two (2) detached ADUs may be constructed.

4. An accessory dwelling unit shall be located on the same lot as the proposed or existing primary dwelling.

5. 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.

6. The accessory dwelling unit shall provide complete and independent living facilities.

7. The accessory dwelling unit shall not be used for a rental term of less than thirty (30) consecutive days.

8. The accessory dwelling unit may not be sold or conveyed separately from the primary dwelling unit unless all of the following apply:

   (i) The accessory dwelling unit was built or developed by a qualified nonprofit corporation. For the purposes of this section, a qualified nonprofit corporation means a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section 214.15 of the California Revenue and Taxation Code for properties intended to be sold to low-income families who participate in a special no-interest loan program.

(ii) There is an enforceable restriction on the use of the land on which the ADU is located pursuant to a recorded contract between the qualified buyer and the qualified nonprofit corporation. For the purposes of this section, a qualified buyer means very-low and low-income households as defined in Section 16.20.195.

(iii) The property is held pursuant to a recorded tenancy in common agreement that includes an allocation to each qualified buyer of an undivided, unequal interest in the property based on the size of the dwelling that each qualified buyer occupies: a repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the accessory dwelling unit or primary dwelling if the buyer desires to sell or convey the property: a requirement that the qualified buyer occupy the property as the qualified buyer's principal residence: and affordability restrictions on the sale and conveyance of the property that ensures the property will be preserved for very-low income or low-income housing for forty-five (45) years for owner-occupied housing and will be sold or resold to a qualified buyer.

(iv) A grant deed naming the grantor, grantee, and describing the property interests being transferred shall be recorded with the County. A Preliminary Change of Ownership Report shall be filed concurrently with the grant deed pursuant to Section 480.3 of the Revenue and Taxation Code.

(v) If requested by a utility providing service to the primary residence, the accessory dwelling unit has separate water, sewer, or electrical connection to that utility.

9. The accessory dwelling unit shall have adequate water supply pursuant to specifications of the Uniform Plumbing Code.

10. 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.

11. The design and construction of each ADU within single-family or multi-family dwellings shall conform to all applicable provisions of the California Residential Code and the California 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.

12. Unless prohibited by California Government Code Sections 66310-66342 an ADU shall not convert the required parking for an existing or proposed multi-family dwelling within an enclosed garage or carport without the concurrent replacement of the existing required parking elsewhere on the property in accordance with the size, placement, and design standards of the Development Code.

13. Notwithstanding any other provision in this Section 16.12.360, the City shall ministerially approve an application for a JADU and/or one or more ADUs if the proposed unit meets the requirements of Government Code Sections 66323.

E. Design and Development Standards—Accessory Dwelling Units.

1. The accessory dwelling unit may be either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses,

or an accessory structure, or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling, including detached garages. 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 one thousand two hundred (1,200) square feet 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 one thousand six hundred (1,600) square feet or less, an attached accessory dwelling unit shall conform to the provisions of Section 16.12.360(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. Independent access to an attached accessory dwelling unit is required and shall not be located on the same wall plane elevation as the access to the primary dwelling.

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.

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 eight hundred (800) square-foot accessory dwelling unit with four-foot side yard and rear yard setbacks, and that is constructed in compliance with all other development standards

8. A detached accessory dwelling unit created on a lot with an existing or proposed single-family or multi-family dwelling may not exceed sixteen (16) feet in height. However, a detached accessory dwelling unit may be up to eighteen (18) feet in height if it is located within one-half mile walking distance of a major transit stop or a high-quality transit corridor, as those terms are defined in Section 21155 of the Public Resources Code. Furthermore, a detached accessory dwelling unit may be up to two additional feet in height to accommodate a roof pitch on the accessory dwelling unit that is aligned with the roof pitch of the primary dwelling unit. A detached accessory dwelling unit created on a lot with an existing or proposed multi-family dwelling that has more than one story above grade may not exceed eighteen (18) feet in height. An accessory dwelling unit that is attached to the primary dwelling may not exceed twenty-five (25) feet in height or exceed two stories.

9. 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.

10. 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.

11. The accessory dwelling unit shall be architecturally compatible with the design of the primary unit and shall match with the same colors and materials of the primary unit.

12. 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. For the purposes of this section, enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence.

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 junior accessory dwelling unit.

b) For the purposes of providing service for water, sewer or power, including a connection fee, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit. Lots that are not connected to sewer facilities shall meet the Lahontan Regional Water Quality Control Board regulations pertaining to minimum septic tank capacity.

c) A junior accessory dwelling unit shall not exceed five hundred (500) square feet in size and shall be contained entirely within a single family residence.

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.

f) The junior accessory dwelling unit may have a bathroom or share with the proposed or existing single family residence. If a permitted junior accessory dwelling unit does not include a separate bathroom, then an interior entry to the main living area shall be provided.

g) A junior accessory dwelling unit shall not convert the required parking for the primary residential structure located within an attached garage without the concurrent replacement of the existing required parking within an enclosed garage elsewhere on the property in accordance with the size, placement, and design standards of the Development Code.

h) A deed restriction, in a form to be approved and provided by the city, must be recorded and 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 thirty (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; Ord. No. 2022-13, § 3(Exh. A), 9-6-2022; Ord. No. 2024-13, § 3(Exh. A), 12-3-24; Ord. No. 2025-01, § 3(Exh. A), 5-20-25)