

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

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



May 23, 2024

Ryan Leonard, Senior Planner
Planning Department
City of Hesperia
9700 Seventh Avenue
Hesperia, CA 92345

Dear Ryan Leonard:

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

Please Note: As of March 25, 2024, with the Chaptering of Senate Bill (SB) 477 (Chapter 7, Statutes of 2024), the sections of Government Code relevant to State ADU and JADU Law have been re-numbered (Enclosure 1).

Thank you for submitting the City of Hesperia (City) accessory dwelling unit (ADU) Ordinance No. 2022-13 (Ordinance), adopted September 6, 2022, to the California Department of Housing and Community Development (HCD). HCD has reviewed the Ordinance and submits these written findings pursuant to Government Code section 66326, subdivision (a). HCD finds that the Ordinance does not comply with State ADU and junior accessory dwelling unit (JADU) Laws in the manner noted below. Under section 66326, subdivision (b)(1), the City has up to 30 days to respond to these findings. Accordingly, the City must provide a written response to these findings no later than June 23, 2024.

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

1. Section 16.12.360 B.c. – *JADU Definition* – The Ordinance defines JADU as, "...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." Government Code section 66333, subdivision (e)(2) requires that, "If a permitted junior accessory dwelling unit does not include a separate bathroom, the permitted junior accessory dwelling unit shall include a separate entrance from the main entrance to the structure, with an interior entry to the main living area."

Additionally, Government Code section 66333, subdivision (d), requires that JADUs "...be constructed within the walls of the proposed or existing single-family residence. For purposes of this subdivision, enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence." The omissions of "interior entry" and "enclosed uses" are inconsistent with State JADU Law. The City must amend the Ordinance accordingly.

2. Section 16.12.360 C.b.a. and C.b.b. – *Approvals Timeline* – The Ordinance states, "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...the Applicant requests for a delay, in which case the 120 day time period is tolled for the period of the requested delay...." However, Government Code section 66317, subdivision (a) states, "The permitting agency shall either **approve or deny** the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within **60 days** from the date the permitting agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot." Additionally, pursuant to Government Code section 66317, subdivision (b), any denial must be accompanied with a complete list of items that are defective or deficient and a description of how the application can be remedied. Therefore, the City must amend the Ordinance to comply State ADU Law.
3. Section 16.12.360 D.2. and F.2. – *Unit Mixture* – The Ordinance states, "Lots with an existing or proposed single-family residence may be permitted one (1) accessory dwelling, and one (1) junior accessory dwelling...."

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

This permits a homeowner, who meets specified requirements, to create one converted ADU; one detached, new construction ADU; and one JADU. Thus, if the local agency approves an ADU that is created from existing (or proposed) space, and the owner subsequently applies for a detached ADU (or vice versa) that meets the size and setbacks pursuant to the subdivision, the local agency

cannot deny the application, nor deny a permit for a JADU under this section. HCD notes that the Legislature, in creating the list, did not use “or” nor “one of” to indicate only one or another would be applicable to the exclusion of the other.

Therefore, the City must amend the Ordinance to comply with State ADU Law.

4. Section 16.12.360 D.5. – *Owner Occupancy* – The Ordinance states, “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).” However, Government Code section 66315 states, “Section 66314 establishes the maximum standards that a local agency shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in Section 66314, shall be used or imposed, including an owner-occupant requirement...” Therefore, the City must remove this section from the Ordinance.
5. Section 16.12.360 D.7. – *Separate Sale* – The Ordinance states “The accessory dwelling unit shall not be sold separately....” However, Government Code section 66341, creates a narrow exception to allow separate conveyance of an ADU to a qualified buyer if the property was built or developed by a qualified nonprofit corporation, under certain conditions. Additionally, Government Code section 66342, gives local jurisdictions the option to adopt an ordinance to govern the separate sale of an ADU from its primary dwelling. Therefore, the City must note the exception required by Government Code section 66341 and may consider an ordinance per Government Code section 66342.
6. Section 16.12.360 E.1. – *Conversion* – The Ordinance states, “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.” Thus, the Ordinance does not permit the creation of ADUs through the conversion of interior space in the existing or proposed primary single-family dwelling. However, Government Code section 66323, subdivision (a) states, “...a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following: (1) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if... the accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure.” Therefore, the City must amend the Ordinance to comply with State ADU Law.

7. Section 16.12.360 E.2. – *Max Size for Conversion* – The Ordinance states, “A detached accessory unit shall not exceed 1,200 square feet of livable floor area.” However, converted units created under Government Code section 66323, subdivisions (a)(1) and (a)(3), do not have maximum size limitations. Therefore, the City must amend the Ordinance to comply with State ADU Law and remove the size limitations for these ADUs.
8. Section 16.12.360 E.2. – *Citation Error* – The Ordinance states “...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.” Section 16.20.360 does not refer to single family dwellings, but rather to rules governing adult entertainment zoning. Therefore, the City should correct what appears to be a citation error.
9. 16.12.360 E.3. – *Entry Restrictions* – The Ordinance states, “The entrance to an attached accessory dwelling unit shall be separate from the entrance to the primary unit and 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.” Government Code section 66315 states, “Section 66314 establishes the maximum standards that a local agency shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in Section 66314, shall be used or imposed, including an owner-occupant requirement, except that a local agency may require that the property may be used for rentals of terms 30 days or longer. The City may not require that the separate entrance be located on the rear or side of the primary unit or structure. The City must remove this restriction or amend the Ordinance to say that the “separate entrance should be located in the rear or side of the primary unit or structure whenever feasible.”
10. Section 16.12.360 E.4. – *Front Setbacks* – The Ordinance states, “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.” However, Government Code section 66321, subdivision (b)(3) prohibits, “Any requirement for a zoning clearance or separate zoning review or any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, **front setbacks**, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.” Additionally, local design standards provided by the Ordinance pursuant to Government Code sections 66314 through 66322, may not preclude

a unit created subject to section 66323. Therefore, the City must amend the Ordinance to comply with State ADU Law.

11. Section 16.12.360 E.7. – *Height* – The Ordinance provides that some local development standards cannot preclude a unit with a maximum height of 16 feet. However, Government Code section 66321, subdivision (b)(4) requires height allowances of 16, 18, or 25 feet, depending on the ADU. The City must review current statute and amend the Ordinance to allow for the minimum height requirements in State ADU Law.
12. Section 16.12.360 E.8. – *Parking Exceptions* – The Ordinance provides parking exceptions for the conditions that match those described in Government Code section 66322, subdivisions (a)(1), (a)(3), (a)(4), and (a)(5). However, the Ordinance does not have exceptions pursuant to subdivision (a)(2), “Where the accessory dwelling unit is located within an architecturally and historically significant historic district” and (a)(6), “When a permit application for an accessory dwelling unit is submitted with a permit application to create a new single-family dwelling or a new multifamily dwelling on the same lot, provided that the accessory dwelling unit or the parcel satisfies any other criteria listed in this subdivision.” The City must amend the Ordinance to add these exceptions.
13. Section 16.12.360 E.10. – *“Compatible”* – The Ordinance states, “The accessory dwelling unit shall be compatible with the design of the primary unit and the surrounding neighborhood....” . Government Code section 66314, subdivision (b) requires that the City, “Impose objective standards on accessory dwelling units...” “Objective standards” means standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal¹ .” Therefore, the City must amend the Ordinance and provide objective standards.
14. Section 16.12.360 F.2.c. – *JADU and Expansion* – The Ordinance states “...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.” However, Government Code section 66333, subdivision (d), states that local ordinances must, “Require a permitted junior accessory dwelling unit to be constructed within the walls of the proposed or existing single-family residence.”

The Ordinance appears to cite Government Code section 66323, subdivision (a)(1)(A) which allows, “...an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure.” As

¹ Gov. Code, § 66313, subd. (h).

all JADUs must be created within the primary dwelling (including attached uses such as a garage) the allowance of expansion of an accessory structure may not apply. Therefore, the City must amend the Ordinance to comply with State ADU Law.

In response to the findings in this letter, and pursuant to Government Code section 66326, subdivision (b)(2), the City must either amend the Ordinance to comply with State ADU Law or adopt the Ordinance without changes. Should the City choose to adopt the Ordinance without the changes specified by HCD, the City must include findings in its resolution that explain the reasons the City finds that the Ordinance complies with State ADU Law despite the findings made by HCD. Accordingly, the City's response should provide a plan and timeline to bring the Ordinance into compliance.

Please note that, pursuant to Government Code section 66326, subdivision (c)(1) if the City fails to take either course of action and bring the Ordinance into compliance with State ADU Law, HCD may notify the City and the California Office of the Attorney General that the City is in violation of State ADU Law.

HCD appreciates the City's efforts in the preparation and adoption of the Ordinance and welcomes the opportunity to assist the City in fully complying with State ADU Law. Please contact Mike Van Gorder, of our staff, at (916) 776-7541 or at mike.vangorder@hcd.ca.gov if you have any questions or would like HCD's technical assistance in these matters.

Sincerely,

A handwritten signature in black ink that reads "Jamie Candelaria". The script is cursive and fluid.

Jamie Candelaria
Senior Housing Accountability Unit Manager
Housing Policy Development Division

State ADU/JADU Law Statutory Conversion Table

New Government Code Sections	Previous Government Code Sections
Article 1. General Provisions	
66310	65852.150 (a)
66311	65852.150 (b)
66312	65852.150 (c)
66313	General Definition Section 65852.2 (j) 65852.22 (j)
Article 2. Accessory Dwelling Unit Approvals	
66314	65852.2(a)(1)(A), (D)(i)-(xii), (a)(4)-(5)
66315	65852.2 (a)(8)
66316	65852.2 (a)(6)
66317	65852.2 (a)(3), (a)(7)
66318	65852.2 (a)(9), 65852.2 (a)(2)
66319	65852.2 (a)(10)
66320	65852.2 (b)
66321	65852.2 (c)
66322	65852.2 (d)
66323	65852.2 (e)
66324	65852.2 (f)
66325	65852.2 (g)
66326	65852.2 (h)
66327	65852.2 (i)
66328	65852.2 (k)
66329	65852.2 (l)
66330	65852.2 (m)
66331	65852.2 (n)
66332	65852.23.
Article 3. Junior Accessory Dwelling Units	
66333	65852.22 (a)
66334	65852.22 (b)
66335	65852.22 (c)
66336	65852.22 (d)
66337	65852.22 (e)
66338	65852.22 (f)-(g)
66339	65852.22 (h)
Article 4. Accessory Dwelling Unit Sales	
66340	65852.26 (b)
66341	65852.26 (a)
66342	65852.2 (a)(10)