

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

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March 25, 2022

Patrick Martinez  
Development Services Director  
City of Needles  
817 Third St.  
Needles, CA 92363

Dear Patrick Martinez:

**RE: Review of Needles' Accessory Dwelling Unit (ADU) Ordinance under ADU Law (Gov. Code, § 65852.2)**

Thank you for submitting the City of Needles (City) accessory dwelling unit (ADU) Ordinance No. 634-AC ("Ordinance"), adopted February 9, 2021, to the California Department of Housing and Community Development (HCD). HCD has reviewed the Ordinance and is submitting these written findings pursuant to Government Code section 65852.2, subdivision (h). HCD has determined that the Ordinance does not comply with section 65852.2 in the manner noted below. Under the statute, 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 April 25, 2022

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

- Section 96.08 (A)(1) – *Limited ADU Definition* – The Ordinance defines "Accessory Dwelling Unit" as having "permanent provisions for living, eating, sleeping, cooking and sanitation on the same parcel as a *single-family dwelling*." This is impermissibly restrictive, as Government Code section 65852.2, subdivision (j)(1), defines "Accessory dwelling unit" as "an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a **proposed or existing primary residence**. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the **single-family or multifamily dwelling** is or will be situated." (Emphasis added.) Therefore, the City should add language regarding multifamily buildings to its ADU definition to comply with statute.
- Section 96.00 "Permissible Use Tables"; Section 96.08 (E)(2) and (F)(5) – *Multifamily and ADU Allowances* – The Ordinance includes a table that describes

where ADUs are permitted, allowing them in Residential zones and some Commercial zones; in Section 96.08 (E)(2), the Ordinance states that “on lots zoned for single family residential use, one ADU is allowed per primary dwelling unit. On lots zoned for multi-family residential use, a maximum of two ADUs are permitted”; in Section 96.08 (F)(5), the Ordinance states “there shall be no more than one Accessory Dwelling Unit per primary dwelling on a single-family lot. On a multifamily lot, up to 25 percent of existing units may have an Accessory Dwelling Unit.” These limitations omit several categories of permissible ADUs. ADUs may be created on sites with a *proposed or existing* dwelling, whether single-family or multifamily, and may be additions, conversions of space within an existing structure, livable or not, or a new detached structure. To address all the omissions in these sections, the City should remove the references noted above and refer to Government Code section 65852.2, subdivision (a), which allows for one attached ADU to be built with a primary dwelling, as well as the categories established in Government Code section 65852.2, subdivision (e), as they appear in HCD’s ADU Handbook on page 15:

- “One ADU **and** one JADU are permitted per lot within the existing or proposed space of a single-family dwelling, or a JADU within the walls of the single-family residence, or an ADU within an existing accessory structure, that meets specified requirements such as exterior access and setbacks for fire and safety.” (Emphasis added.)
  - “One detached new construction ADU that does not exceed four-foot side and rear yard setbacks. This ADU may be combined on the same lot with a JADU and may be required to meet a maximum unit size requirement of 800 square feet and a height limitation of 16 feet.”
  - “Multiple ADUs within the portions of multifamily structures that are not used as livable space. Local agencies must allow at least one of these types of ADUs and up to 25 percent of the existing multifamily structures.”
  - “Up to two detached ADUs on a lot that has existing multifamily dwellings that are subject to height limits of 16 feet and four-foot rear and side yard setbacks.”
- Section 96.08 (B)(10) & (C)(8) – *Revocation* – The Ordinance lays out circumstances under which the “Director” may revoke or modify any “accessory dwelling unit permit or a secondary dwelling unit permit,” including “the use for which such approval was granted has ceased to exist or has been suspended for one year or more” and “for other good cause....” HCD has a number of questions about this section to ensure that it is not overly burdensome: What is the “use” for which approval is granted? In what circumstances would such a use be suspended? What remedies would exist for the reinstatement of a permit? Furthermore, the phrase “for other good cause” is not described in the Ordinance, which may allow a subjective process in violation of Government Code 65852.2, subdivision (a)(4), which states that “an accessory dwelling ordinance adopted by a local agency shall provide an approval process that

includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units.” Please either clarify what function the ADU permit performs and how this revocation process would be implemented or remove the section.

- Section 96.08 (E)(8/10) – *Height and Setback Restrictions* – The Ordinance limits ADU heights to 15 feet and requires setbacks of five (5) feet from side and rear property lines. These are impermissibly restrictive. Government Code section 65852.2, subdivision (c)(2)(C), prohibits “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, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks.” Therefore, the City must amend the ordinance.
- Section 96.08 (G)(2) – *JADUs/Multifamily* – The Ordinance permits JADUs on multifamily lots. However, Government Code section 65852.22 prohibits JADUs from multifamily buildings. The City must remove this reference.
- Section 96.08 (G)(13) – *Deed restriction* – The Ordinance prohibits the separate conveyance of an ADU or JADU. However, Government Code section 65852.26 allows for the separate conveyance of an ADU if it meets all the requirements listed in subdivision (a) of the statute. The Ordinance must be amended to allow for such a conveyance.

In these respects, revisions are necessary to comply with statute.

HCD will consider any written response to these findings, such as a revised ordinance or a detailed plan to bring the Ordinance into compliance with law by a date certain, before taking further action authorized pursuant to Government Code section 65852.2. Please note that HCD may notify the Attorney General’s Office in the event that the City fails to take appropriate and timely action under section 65852.2, subdivision (h).

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 ADU Law. Please contact Mike Van Gorder, of our staff, at (916) 776-7541 or [mike.vangorder@hcd.ca.gov](mailto:mike.vangorder@hcd.ca.gov) if you have any questions or would like HCD’s technical assistance in these matters.

Sincerely,



David Zisser  
Assistant Deputy Director  
Local Government Relations and Accountability