DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
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July 22, 2024

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

Dear Patrick Martinez:

RE: Review of Needles' 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 Accessory Dwelling Unit (ADU) and Junior Accessory Dwelling Unit (JADU) Law have been re-numbered (Enclosure 1).

Thank you for submitting the City of Needles (City) accessory dwelling unit (ADU) Ordinance No. 652-AC (Ordinance), adopted, 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 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 August 22, 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. *Statutory Numbering* - The Ordinance contains several references to code sections that were deleted by SB 477, effective March 25, 2024. These include Government Code sections 65852.2, 65852.22 and 65852.26. The contents of these sections were relocated to Government Code, Title 7, Division 1, Chapter 13 (sections 66310-66342, see Enclosure). The City must amend the Ordinance to refer to the correct code sections.

2. Section 96.00, Section 96.08 (G) 1 - *Permissible Use Table, JADUs and Zoning* – The Ordinance in the Permissible Use Table, permits JADUs in the CRR, C1, and C2 zones but the table does not allow single-family homes in the C2 zone. This creates an inconsistency that must be addressed since JADUs can only be

created in a single-family home in a zone that allows for single-family homes. It later states that "the proposed [JADU] would be located in a residential zone, including the R-1, R2, R-3 and CRR zones." The Ordinance is therefore internally inconsistent as to where JADUs are permitted.

Please note that Government Code section 66333 requires that JADU ordinances "provide for the creation of junior accessory dwelling units in single-family residential zones." While a commercial zone may allow single-family homes by-right, JADUs must be located in "single-family residential zones". Therefore, the City must amend the Ordinance to comply with State ADU Law.

3. Section 96.08 (A) 8 and (G) 5 – *JADUs and Attached Garages* – The Ordinance defines a "JADU" as, "A unit that is no more than 500 square feet in size and contained entirely within an existing single-family structure." It later states JADUs must, "be created within the existing walls of a single-family dwelling." However, Government Code section 66333, subdivision (d) states "enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence." Therefore, the City must amend the Ordinance to note the allowance.

   Section 96.08 (A) 14, (D) 11 and (H) – *Tiny Homes* – The Ordinance defines "Tiny Home" as, "a detached structure on a permanent foundation that provides complete independent living facilities for one or more persons and is located on the same lot as the primary dwelling…to which it is an accessory use." Section (D) 11 states, "In order to grant an accessory dwelling unit permit for an accessory dwelling unit (manufactured home/tiny home) the director, or his/her designee, shall find that the accessory dwelling unit would comply with all of the standards set forth in Section 96.08 (H) for such accessory dwelling units." Section 96.08 (H) then creates "Standards for Manufactured Homes and Tiny Homes" as distinct from standards for primary dwellings (single -family or multifamily).

   To be approved and occupied as an ADU, a tiny home must comply with the standards of, and be approved as one of the following types of structures: a HUD-Code manufactured home (MH), a California Residential Code home or California Building Code home. The City should note that units that do not meet these definitions may not approved as ADUs. The City must amend the Ordinance to ensure compliance with these statutes. Further, for a Tiny Home to be considered an ADU, it must meet the definition of ADU in Government Code section 66313, subdivision (a).

4. Section 96.08 (A) 15 – *Park Model* – The Ordinance's definition of "manufactured home" includes "park model homes". Manufactured Homes are defined in Health and Safety Code section 18007 and exclude Park Models, also known as Park Trailers. Park Models are therefore considered recreational vehicles as defined in

Health and Safety Code section 18009.3. Government Code section 66313, subdivision (a) defines ADUs as having "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" and while these include Manufactured Homes, Park Models are not[1]. Recreational vehicles are not permanent structures for the purpose of ADUs. Therefore, the City must amend the Ordinance to comply with State ADU Law.

5. Section 96.08 (B) 3, (C) 3 and (D) 10 – *"Shall Act"* – The Ordinance states that, "applications for accessory dwelling units shall be acted upon by Development Services… within 60 days…." However, current Government Code section 66317, subdivision (a) states a "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…." Therefore, the City must amend the Ordinance to be consistent with State ADU Law.

   Additionally, Government Code section 66317, subdivision (b) states "If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit pursuant to subdivision (a), the permitting agency shall, within the time period described in subdivision (a), return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant."[2] The City must amend the Ordinance to add relevant language.

6. Section 96.08 (B) 10 and (D) 19 – *Infractions* – The Ordinance states, "Violations considered an infraction. Violations of this section shall be punished as infractions or by administrative citation, in the discretion of the director, or is/her designee, and shall be subject to the provisions of Article XVIII 11 Enforcement and Review" as well as Chapter 2A "Administrative Citations[.]" This is repeated verbatim in section (D) 19.

   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….". Therefore, the City must remove this provision.

7. Section 96.08 (B)12 – *Deed Restriction* – The Ordinance states, "The property on which the accessory dwelling unit is located shall have deed restrictions recorded upon it as set forth below prior to issuance of a building permit for the unit." However, a deed restriction cannot be imposed on an ADU. Government Code section 66315 states, "No additional standards, other than those provided in

[1] Gov. Code § 66313, subd. (a)(2).
[2] See also Gov. Code § 66335, subd. (b).

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." A deed restriction would be an "additional standard" and thus cannot be imposed. The City must remove this provision from the Ordinance.

8. Section 96.08 (D) 4 – *Size Minimums* – The Ordinance states that Manufactured or Tiny Homes "shall have at least 100 square feet of enclosed space." However, Government Code section 66313, subdivision (a) defines that an ADU may also be an efficiency unit, for which Health and Safety Code section 17958.1 requires "a minimum floor area of 150 square feet." Therefore, the City must amend the Ordinance accordingly.

9. Section 96.08 (D) 7 – *Manufactured Homes and Design Standards* – The Ordinance states that manufactured and tiny homes, "Shall have the following design elements to maintain the character of the residential neighborhood…." However, Government Code section 66314, subdivision (b)(1) requires that local ordinances, "Impose objective standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit," and section 66313, subdivision (h) defines "objective standards" as "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 submittal." The term "character of the residential neighborhood" is subjective and is therefore inconsistent with State ADU Law. The City must amend the Ordinance accordingly.

10. Section 96.08 (D) 17.d – *Revocation* – The Ordinance states that revocation of an ADU permit may be "for other good cause". However, Government Code section 66316 requires that local ADU Ordinances "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, except as otherwise provided in this article." The term "for other good cause" is subjective and discretionary, and thus inconsistent with State ADU Law. Therefore, the City must amend the Ordinance accordingly.

11. Section 96.08 (E) 2 and (F) 5 – *Unit Allowance* – The Ordinance states that for detached ADUs, "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 detached from the multifamily structure are permitted." It later states that for converted ADUs, "There shall be no more than one Accessory Dwelling Unit per primary dwelling on a single family lot."

12. 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…(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.” Paragraph (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. Therefore, the City must amend the Ordinance to provide for all ADU combinations described in Government Code section 66323.

13. Section 96.08 (E) 3, (H) 3 – *Vacation Rental* – The Ordinance states, “The Accessory Dwelling Unit may be rented but may not be rented for a period of less than 30 consecutive days or used as a vacation rental.” This is repeated in section 96.08 (H)(3). 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, except that a local agency may require that the property may be used for rentals of terms 30 days or longer.” The prohibition on use as a vacation rental does not appear in Section 66314 and would be an additional standard that is inconsistent with State ADU Law. The City must remove the prohibition on vacation rentals.

14. Section 96.08 (E) 5 – *Underlying Zoning* – The Ordinance states, “The proposed unit shall comply with development standards for the underlying zoning in which it is located, specifically standards for lot coverage, setback, height, and floor area ratio….” 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." Therefore, notwithstanding the required development standards above, the City must allow for an attached or detached 800 square foot ADU with four side and rear setbacks.

15. Section 96.08 (E) 6 and (H) 6 – *Efficiency Kitchen* – The Ordinance states that, "the proposed Accessory Dwelling Unit shall contain a separate kitchen and bathroom; both the Primary Unit and the Accessory Dwelling Unit shall comply with all requirements of the current residential code." This is repeated verbatim in Standards for Manufactured Homes and Tiny Homes. However, efficiency units as defined in Health and Safety Code section 17958.1, subdivision (a) may have "partial kitchen or bathroom facilities". Therefore, an ADU that is also an efficiency unit may have "partial kitchen" facilities. The City must amend the Ordinance accordingly.

16. Section (E) 7 – *Maximum Size* – The Ordinance states, "The increased floor area of an Attached Accessory Dwelling Unit shall not exceed 50 percent of the existing Living Area…." 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." Therefore, the City must amend the Ordinance to note the allowance.

17. Section 96.08 (E) 8 – *Height* – The Ordinance states, "A detached Accessory Dwelling Unit shall not exceed 16 feet in height." However, Government Code section 66321, subdivision (b)(4)(B), permits a height of 18 feet for a detached unit "that is within one-half of one 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". Additionally, subdivision (b)(4)(C) permits, " A height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed multifamily, multistory dwelling." Therefore, the City must amend the Ordinance to comply with State ADU Law.

18. Section 96.08 (E) 10 and (H) 10 – *Setback Exceptions* – The Ordinance states, "A detached Accessory Dwelling Unit must have a minimum set back of five feet from side and rear property lines." This is repeated verbatim in section H.10. However, Government Code section 66314, subdivision (d)(7) states, "No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of

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 not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure." Additionally, Government Code section 66323, subdivision (a)(2) requires the ministerial approval of a new-construction detached ADU "that does not exceed four-foot side and rear setbacks." Therefore, the City must amend the Ordinance to comply with State ADU Law.

19. Section 96.08 (E) 11.f and (H) 11.f – *Parking Exceptions* – The Ordinance makes exceptions for parking requirements for ADUs under circumstances that match four out of the six subsections of Government Code section 66322, subdivision (a). However, it omits two subdivisions: (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 paragraph." Therefore, the City must amend the Ordinance to add these parking exceptions.

20. Section 96.08 (E) 16, (F) 8 and (H) 16– *Owner Occupancy* – The Ordinance states that, "For ADUs permitted on or after January 1, 2025, owner-occupancy of one of the dwelling units on the parcel… is required." This is repeated verbatim in section H.16. 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 these sections from the Ordinance.

21. Section 96.08 (G) 7- *JADU Kitchens* – The Ordinance states, "The junior accessory dwelling unit shall include an efficiency kitchen, requiring and limited to the following components: a. A sink with a maximum waste line diameter of one-and-a-half (1.5) inches. b. A cooking facility with appliances that do not require electrical service greater than one hundred-twenty (120) volts. Gas appliances are not permitted." However, Government Code section 66333, subdivision (f) requires only "(1) A cooking facility with appliances. (2) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit." Therefore, the requirement of specific waste line diameters, voltages above 120v, and gas appliances are more stringent than State JADU Law. The City must amend the Ordinance accordingly.

22. Section 96.08 (G) 8 – *Parking Prerequisite* – The Ordinance states, "The junior accessory dwelling unit would be located on a lot where the primary residence complies with current parking standards for its zone." However, Government Code section 66336 states, "A local agency shall not deny an application for a permit to create a junior accessory dwelling unit pursuant to this article due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and that are not affected by the construction of the junior accessory dwelling unit." Noncompliance with parking standards would constitute a zoning nonconformity that may not preclude a JADU. Therefore, the City must amend the Ordinance accordingly.

23. Section 96.08 (G)12 and (G) 13.a – *JADU Terms* – The Ordinance states that JADUs, "shall not be rented for less than thirty (30) consecutive days." However, Government Code section 66333 does not require rental term minimums for JADUs and therefore such a requirement would be inconsistent with State JADU Law. The City must amend the Ordinance accordingly.

24. Section 96.08 (H) 2 – *Number of Units* – The Ordinance states that for Manufactured or Tiny Homes "…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." However, Government Code section 66323, subdivision (a), requires the ministerial approval of the combination of units , which, for a single-family lot, would yield up to three units: one converted ADU; one detached, new construction ADU; and one JADU. See finding 12 above.

    Section 96.08 (H) 2 describes Manufactured Homes and Tiny Homes, but in this section refers to subject units as "ADUs". While the City may permit any Manufactured Homes and Tiny Homes (as defined in the Ordinance) in any combination, the City must permit ADUs subject to section 66323 without reference to other additional dwelling units on a lot. Therefore, to prevent inconsistency with State ADU Law, the City should draw a distinction between ADUs subject to section 66323 and dwelling units subject only to Section H and apply a unit allowance specific to the units subject only to Section H.

25. Section 96.08 (H) 8 – *Tiny Home Height* – The Ordinance states that for Manufactured Homes and Tiny Homes, "a detached Accessory Dwelling Unit shall not exceed 15 feet in height." However, Government Code section 66321, subdivision (b)(4) requires heights of 16, 18 or 20 feet, as discussed in Finding 17 above. Therefore, the City must amend the Ordinance to comply with State ADU Law.

26. Section 96.08 H.10 – *Setbacks Above Garages* – The Ordinance states that "a setback of no more than five (5) feet from the side and rear lot lines shall be required for an Accessory Dwelling Unit that is constructed above a garage." For a unit created above an attached garage, Government Code section 66314, subdivision (d)(7) requires "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 not converted from an existing structure." Therefore, the City must amend the Ordinance to comply with State ADU Law.

Please note that the City has two options in response to this letter. The City can either amend the Ordinance to comply with State ADU Law or adopt the Ordinance without changes and include findings in its resolution adopting the Ordinance that explain the reasons the City believes that the Ordinance complies with State ADU Law despite HCD's findings. If the City fails to take either course of action and bring the Ordinance into compliance with State ADU Law, HCD must notify the City and may notify 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,

Jamie Candelaria

Jamie Candelaria
Senior Housing Accountability Manager
Housing Policy Development Division