

***ITEM #3** Provo City Council Office requests Ordinance Text Amendments to Sections 6.02.080 (License Suspension or Revocation), 14.06.020 (Definitions), and 14.30.030 (Accessory Dwelling Unit (ADU) Development Standards) to update and clarify standards related to ADUs. Citywide application. Melia Dayley (801) 852-6136 mdayley@provo.org PLOTA20240274

Applicant: Provo City Council

Staff Coordinator: Melia Dayley

ALTERNATIVE ACTIONS

1. **Continue** to a future date to obtain additional information or to further consider information presented. *The next available meeting date is November 13, 2024 at 6:00 P.M.*
2. **Recommend Denial** of the requested ordinance text amendment. *This action would not be consistent with the recommendations of the Staff Report. The Planning Commission should state new findings.*

Relevant History: The Provo City Council motioned on January 9th and April 30th directing Council staff to review “supplemental ADU rules” including the extra living space, second kitchen agreements, occupancy and parking limits, as well as the City’s education/enforcement toolkit regarding ADUs and propose enhancements if deemed necessary.

Council staff held meetings with community members, Development Services and Legal staff, and Councilors and drafted several text amendments related to the Council motions.

During the August 20th and September 3rd Council Work Meetings, five text amendments were moved forward to be heard at a Council Meeting for final approval. Four of the five motioned amendments need Planning Commission recommendations before returning to the Council for a final vote.

Summary of Key Issues:

- Councilors asked staff to add proof of owner occupancy requirements to rental dwelling licenses for accessory dwelling units

Staff Recommendation: Council staff recommends approval of this proposed amendment.

OVERVIEW

The proposed amendments aim to enable administrative staff to proactively check owner occupancy status of ADUs when an applicant applies for a rental dwelling license for an ADU.

STAFF ANALYSIS

After Council staff review of the RDL requirements for ADUs, Council recommended the proposed amendments to require applicants to prove owner occupancy of the ADU property. Currently, administrative staff frequently check for owner occupancy during the RDL process for ADUs, but it is not an explicit requirement for the initial application. This addition aims to make the owner occupancy requirement more apparent and clearer to applicants. Administrative staff added provisions to address owner occupancy situations in which the property is owned by a trust or LLC.

CONCLUSION

Council staff believe these amendments will make the process more efficient and aid enforcement for over-occupancy; and would recommend that the Planning Commission forwards a positive recommendation of the amendment to the City Council.

ATTACHMENTS

1. Proposed Text Amendment

ATTACHMENT 1 - PROPOSED TEXT AMENDMENT

6.26.080

License Suspension or Revocation.

The City may suspend or revoke a rental dwelling business license for any of the reasons set forth in Section 6.01.160 of this Title and for any of the following reasons:

- (1) the licensee does not meet the qualifications for a license as provided under this Title;
- (2) the licensee gave false or incomplete information on the licensee's application;
- (3) the licensee has allowed the licensed premises to be occupied or operated in a manner contrary to the conditions set forth in the license; or
- (4) the licensee has, or the licensee's agents or employees have, violated the provisions of the license, this Title, or any other law while acting in relation to any rental dwelling authorized by the license~~as an agent or employee of the licensee.~~

14.06.020

Definitions.

For the purposes of this Title, certain words and phrases have the following meanings:

...

"Owner occupant" means, except as set forth in Subsection (d) ~~(e)~~ of this definition:

...

(b) an individual who:

(i) is a trustor of a family trust which:

(A) possesses fee title ownership to a dwelling unit;

(B) was created for estate planning purposes by one (1) or more trustors of the trust; and

(ii) occupies the dwelling unit owned by the family trust with a bonafide intent to make it his or her primary residence. Each living trustor of the trust ~~must shall~~ so occupy the dwelling unit except for a trustor who temporarily resides elsewhere due to a disability or infirmity. In such event, the dwelling unit ~~must shall~~ nevertheless be the domicile of the trustor during the trustor's temporary absence.

(c) an LLC which:

(i) is currently registered with the state; and

(ii) each member of the LLC occupies the dwelling unit with a bonafide intent to make it his or her primary residence.

~~(d)(c)~~—A person who meets the requirements of Subsections (a), ~~(b), or and(c) (b)~~ of this definition ~~may shall~~ not be deemed an owner occupant if the property on which the dwelling unit is located has more than one (1) owner and all owners of the property do not occupy the dwelling unit with a bona fide intent to make the dwelling unit their primary residence

...

~~(e)(d)~~ The provisions of Subsection ~~(d) (e)~~ of this definition shall apply to any person who began a period of owner occupancy after March 1, 2009, regardless of when the person purchased the property where such person resides.

...

“Primary residence” means the dwelling unit where a person principally or primarily resides, specifically meaning that the person physically resides in the dwelling unit more than fifty percent of the time.

(a) When Provo City requires proof that a dwelling unit is the person’s primary residence, the person must provide sufficient evidence to prove by a totality of the circumstances that the person:

(i) already physically resides in the dwelling unit more than fifty percent of the time and has a genuine intent to continue meeting this requirement;
or

(ii) has a genuine intent to physically reside in the dwelling unit more than fifty percent of the time going forward.

(b) It is not necessary to provide every type of evidence listed in this Section to establish residency, nor does providing every type of evidence listed definitively establish residency if other evidence exists that calls residency into question.

(c) Potential evidence to establish physical residence may include, but is not limited to:

~~(a)—the place where a person resides and which has the same address as the address shown on the person’s:~~

(i) current driver license,

- (ii) current vehicle registration,
- (iii) voter registration card, if any,
- (iv) last filed state tax return, ~~and~~
- (v) last filed federal tax return,
- [\(vi\) bank or credit card statements,](#)
- [\(vii\) utility bills.](#)
- [\(viii\) inspections of the property.](#)
- [\(ix\) a sworn, notarized affidavit from the applicant; and](#)
- [\(x\) written statements of those having knowledge.](#)

~~(b) If the addresses shown on the above-referenced documents are not all the same, then the person whose name appears on such documents shall be deemed to have no primary residence.~~

...

4.30.030

Accessory Dwelling Unit (ADU) Development Standards.

ADUs shall be subject to the following development standards:

...

(10) *Rental Dwelling License*. In accordance with [Provo City Code](#) Chapter 6.26, ~~Provo City Code~~, any person operating an ADU under this Chapter ~~must~~ ~~shall~~ obtain a rental dwelling license (RDL). ~~Such license shall be~~ [This RDL is](#) in addition to any building permits that may be necessary. ~~Before a rental dwelling license for an ADU is issued, the applicant shall:~~

[\(a\) In addition to complying with Provo City Code Chapter 6.26, to be eligible for an RDL, a person operating an ADU under this Chapter must:](#)

~~(i)(a)~~ Submit a site plan drawn accurately to scale that shows property lines and dimensions, the location of existing buildings and building entrances, proposed buildings or additions, dimensions from buildings or additions to property lines, the location of parking stalls, and utility meters. ~~;~~

~~(ii)(b)~~ Include detailed floor plans drawn to scale with labels on rooms indicating uses or proposed uses. Floor plans must have the interior connection clearly labeled.;

~~(iii)(e)~~ Pay an application fee as shown on the Consolidated Fee Schedule adopted by the Municipal Council.;

~~(d)–Noncompliance with the standards of this Section shall be just cause for the denial or revocation of a rental dwelling license for an ADU. Revocation shall be in accordance with the license regulations in Chapters 6.01 and 6.26, Provo City Code.~~

~~(e)–Notwithstanding Section 6.01.090, Provo City Code, the approval of a rental dwelling license for an ADU shall automatically expire one (1) year after the date of the approval, or upon transfer of the property to another owner, whichever occurs first; provided, however, that the existing owner may reapply or the new owner may apply for an extension of such rental dwelling license.~~

~~(iv)(f)~~ ~~The owner shall c~~Cooperate with the Development Services Department in recording a deed restriction with the County Recorder evidencing the restrictions under which the ~~ADU~~~~accessory apartment unit~~ is constructed and occupied. This deed restriction ~~must~~~~shall~~ run with the land as long as the property ~~is in an overlay zone described in this Chapter, or otherwise~~ contains an ~~ADU~~~~accessory apartment~~ as provided in this Chapter.;

~~(v)(g)~~ ~~The owner shall r~~Renew the rental dwelling license annually.;

~~(vi) confirm~~~~Establish at the time of the initial application and at every renewal~~ that the dwelling is the owner's primary residence ~~by providing at least two of the following forms of verification: a current driver license, current vehicle registration, voter registration card, last filed state tax return, and/or last filed federal tax return.~~

~~(b)(d)~~ Noncompliance with the standards of this Section ~~is~~~~shall be~~ just cause for the denial or revocation of a rental dwelling license for an ADU. Revocation ~~will~~~~shall~~ be in accordance with the license regulations in ~~Provo City Code~~ Chapters 6.01 and 6.26, ~~Provo City Code~~.

~~(c)(e)~~ Notwithstanding ~~Provo City Code~~ Section 6.01.090, ~~Provo City Code~~, the ~~approval of~~ a rental dwelling license for an ADU ~~shall~~ automatically expires one (1) year after the date of the approval, or upon transfer of the property to another owner, whichever occurs first; ~~provided, however, that the existing owner may reapply or the new owner may apply for an extension of such rental dwelling license.~~

~~(d) (g)~~—The owner(s) must ~~shall~~ renew the rental dwelling license annually and confirm that the dwelling is the owner(s)'s primary residence of the owner(s) by providing at least two of the following forms of verification: a current driver license, current vehicle registration, voter registration card, last filed state tax return, and/or last filed federal tax return. Changes to the members of the LLC or trustors within the first year of obtaining an ownership and a rental license, or consistent changes to the same during the rental period, creates a presumption of a sham transaction as defined in Section 14.01.110 of the Provo City Code.