



Provo City Planning Commission

Report of Action

October 23, 2024

***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

The following action was taken by the Planning Commission on the above described item at its regular meeting of October 23, 2024:

RECOMMENDED DENIAL

On a vote of 4:1, the Planning Commission recommended that the Municipal Council deny the above noted application.

Motion By: Jeff Whitlock

Second By: Adam Shin

Votes in Favor of Motion: Jeff Whitlock, Adam Shin, Daniel Gonzales, Andrew South

Votes Against the Motion: Lisa Jensen

Daniel Gonzales was present as Chair.

- New findings stated as basis of action taken by the Planning Commission or recommendation to the Municipal Council; Planning Commission determination is not generally consistent with the Staff analysis and determination.

TEXT AMENDMENT

The text of the proposed amendment is attached as Exhibit A.

STAFF PRESENTATION

The Staff Report to the Planning Commission provides details of the facts of the case and the Staff's analysis, conclusions, and recommendations. Melia Dayley noted the purpose and need for the proposed changes and answered Planning Commission questions regarding enforcement.

CITY DEPARTMENTAL ISSUES

- The Coordinator Review Committee (CRC) has reviewed the application and given their approval.

NEIGHBORHOOD MEETING DATE

- City-wide application; all Neighborhood District Chairs received notification.

NEIGHBORHOOD AND PUBLIC COMMENT

- This item was City-wide or affected multiple neighborhoods.

CONCERNS RAISED BY PUBLIC

Any comments received prior to completion of the Staff Report are addressed in the Staff Report to the Planning Commission. Key issues raised in written comments received subsequent to the Staff Report or public comment during the public hearing included the following: None.

APPLICANT RESPONSE

Key points addressed in the applicant's presentation to the Planning Commission included the following:

- Melia Dayley noted that the amendments intentionally allow for discretion from code enforcement and legal in verifying owner-occupancy on rental units, specifically with LLCs.

PLANNING COMMISSION DISCUSSION

Key points discussed by the Planning Commission included the following:

- Commissioners noted concerns with strict LLC regulations, that all owners of an LLC having to live in the home goes too far, and that a different percentage requirement would be a fairer approach.
- Commissioners believe that the main issue is people that don't apply for a rental license, and that these changes don't do anything to address that and may even make it more difficult to get people to comply.
- Planning Commission suggested that the changes in 14.30.030 reference the same list of documents for verification that is used in the owner-occupancy definition section.
- Daniel Gonzales noted that he would like to see a requirement for percentage ownership disclosed as a requirement with LLCs.
- There was some discussion of the proposed regulations being too difficult for people in unusual living circumstances or for those that need help buying homes.

FINDINGS / BASIS OF PLANNING COMMISSION DETERMINATION

The Planning Commission identified the following findings as the basis of this decision or recommendation:

The Commission did not feel comfortable with the lack of a clear verification process, documentation for LLCs, and believes that the proposed changes would make home ownership more difficult, so they recommended denial of the proposed changes.

Planning Commission Chair

Director of Development Services

See Key Land Use Policies of the Provo City General Plan, applicable Titles of the Provo City Code, and the Staff Report to the Planning Commission for further detailed information. The Staff Report is a part of the record of the decision of this item. Where findings of the Planning Commission differ from findings of Staff, those will be noted in this Report of Action.

Legislative items are noted with an asterisk (*) and require legislative action by the Municipal Council following a public hearing; the Planning Commission provides an advisory recommendation to the Municipal Council following a public hearing.

Administrative decisions of the Planning Commission (items not marked with an asterisk) **may be appealed** by submitting an application/notice of appeal, with the required application and noticing fees to the Development Services Department, 445 W Center Street, Provo, Utah, **within fourteen (14) calendar days of the Planning Commission's decision** (Provo City office hours are Monday through Thursday, 7:00 a.m. to 6:00 p.m.).

BUILDING PERMITS MUST BE OBTAINED BEFORE CONSTRUCTION BEGINS

EXHIBIT A

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)(e)~~—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.~~

...

14.30.030

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.;

[\(iii\)\(c\)](#) 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.~~