

**Planning Commission Hearing
Staff Report
Hearing Date: November 13,
2024**

***ITEM #8** Development Services requests an Ordinance Text Amendment to Section 14.01.110 (Prohibition of Sham Property Transactions) to clarify rules with LLCs and trusts. Citywide application. Jessica Dahneke (801) 852-6413 jdahneke@provo.org PLOTA20240309

Applicant: Development Services

Staff Coordinator: Jessica Dahneke

ALTERNATIVE ACTIONS

1. **Continue** to a future date to obtain additional information or to further consider information presented. *The next available meeting date is December 11, 2024, 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 Staff previously proposed a series of text amendments concerning accessory dwelling units, which were discussed during the October 23, 2024, Planning Commission Hearing. These revisions focused on refining definitions, as well as clarifying the rental licensing application and revocation processes.

Those proposed text amendments highlighted the opportunity to provide additional clarifications to 14.01.100 (Prohibition of Sham Property Transactions) regarding what constitutes a sham property transaction and when changes to ownership of properties with accessory apartments would be considered a sham transaction. The proposed text amendment provides a clear standard for what is considered a sham property transaction when a property owned by a trust or LLC has an accessory dwelling unit.

Neighborhood Issues: Staff have not received any feedback on this text amendment request.

Summary of Key Issues:

- Properties owned by LLCs and trusts can establish an accessory dwelling unit, provided the members of the LLC or trustors of the trust occupy the property as their primary residence.
- This text amendment to 14.01.110 (Prohibition of Sham Property Transactions) provides clear parameters explaining when changing members of an LLC or trustors of a trust can constitute a sham property transaction.

Staff Recommendation: Staff recommends the Planning Commission recommend approval of the proposed ordinance text amendment.

OVERVIEW

Development Services is proposing a text amendment to 14.01.110 (Prohibition of Sham Property Transactions) to add clarity to when change of ownership to an LLC or change of trustors to a trust could be considered a sham property transaction. This change is being proposed as part of the additional changes previously proposed to codes for establishing an accessory dwelling unit at a property. This proposed change does not alter who can establish an accessory dwelling unit or the process to establish an accessory dwelling unit but provides further clarity on what can be considered a sham transaction.

Staff believe the increased specificity of this proposed text amendment increases clarity regarding sham property transactions. This offers greater transparency for those seeking to establish an accessory apartment at their property while creating clear guidelines for the city to enforce when necessary.

FINDINGS OF FACT

- Properties owned by LLCs and trusts can establish accessory dwelling units.
- Provo City Code requires the owners on title occupy the property as their primary residence to establish an accessory dwelling unit.
- When the property is owned by a trust Provo City Code requires the trustors to live at the property as their primary residence.
- 14.01.110, Prohibition of Sham Property Transactions does not currently include specific text addressing how changes to LLCs and trusts could constitute a sham property transaction.
- This proposed text amendment gives clear parameters regarding when the change of ownership of LLCs and trusts constitutes a sham property transaction.

STAFF ANALYSIS

Provo City Code Section 14.02.020(2) sets forth the following guidelines for consideration of ordinance text amendments.

Before recommending an amendment to this Title, the Planning Commission shall determine whether such amendment is in the interest of the public and is consistent with the goals and policies of the Provo City General Plan. The following guidelines shall be used to determine consistency with the General Plan:

- (a) Public purpose for the amendment in question.

Staff response: The amendment would support the City's goals to simplify the zoning code and increase enforcement efficiency.

(b) Confirmation that the public purpose is best served by the amendment in question.

Staff response: Staff believes that the proposed amendment serves the public by making requirements clearer to the public.

(c) Compatibility of the proposed amendment with General Plan policies, goals, and objectives.

Staff response: The proposed amendment is consistent with the General Plan.

(d) Consistency of the proposed amendment with the General Plan's "timing and sequencing" provisions on changes of use, insofar as they are articulated.

Staff response: There are no timing and sequencing issues related to this proposal.

(e) Potential of the proposed amendment to hinder or obstruct attainment of the General Plan's articulated policies.

Staff response: This proposal does not hinder or obstruct attainment of the General Plan's articulated policies.

(f) Adverse impacts on adjacent landowners.

Staff response: Staff do not foresee any adverse impacts on adjacent landowners.

(g) Verification of correctness in the original zoning or General Plan for the area in question.

Staff response: This proposal does conflict with zoning or the General Plan.

(h) In cases where a conflict arises between the General Plan Map and General Plan Policies, precedence shall be given to the Plan Policies.

Staff response: There is not a conflict.

CONCLUSIONS

The proposed amendment to Section 14.01.110 (Prohibition of Sham Property Transactions) establishes a well-defined standard for what constitutes a sham property transaction in the context of establishing and renting an accessory dwelling unit when the property is owned by a trust or an LLC. This increased clarity should help to inform and guide those seeking to legitimately establish an accessory apartment, while also providing the city with clearer parameters to enforce the regulations surrounding sham transactions.

ATTACHMENTS

1. Proposed Text Amendment

ATTACHMENT 1 – PROPOSED TEXT AMENDMENT

14.01.100

Prohibition of Sham Property Transactions.

...

(2) A sham transaction shall be presumed regarding premises required by this Title to be owner occupied when:

(a) the name of a person who does not occupy the premises periodically appears as the owner of the property in the chain of title over a period of time; ~~or~~

(b) the name of the person who occupies premises and claims to be the property owner does not appear in any instrument in the land records of Utah County which grants a fifty-one percent (51%) or greater property interest in the property to such person; ~~or~~

(c) a property owner who does not occupy the premises transfers the owner's interest in the property, or a portion thereof, to another person who:

(i) occupies the premises as the purported property owner and agrees to transfer the property back to the non-occupying property owner upon termination of person's occupancy of the premises on the property or some other event, or

(ii) executes, as a condition of occupancy, documents that will have the effect of transferring the title to the property back to the first property owner upon termination of the person's occupancy of the property. ~~or~~

(d) if the property owner is an LLC or trust, the following types of ownership changes occupier within the first year of ownership by an LLC or trust, occur within the first year after applying for a rental license, or repeatedly occur during the rental period, unless every member or trustor can be demonstrated to occupy the premises as their primary residence:

(i) changes in ownership involving member of the LLC or trustors; or

(ii) transfer of the property to another LLC or trust, if any member or trustor of the new owner entity was also a member or trustor of the transferring owner entity, or an immediate family member of a member or trustor of the transferring owner entity.