

STAFF REPORT
TOWN OF BRIGHTON
PLANNING COMMISSION

From: Polly McLean, Town Attorney

Date: 9/16/2024 for 9/16/2024 Planning Commission Meeting

Re: Internal Accessory Dwelling Units and Short Term Rentals

History

In 2021, the Utah Legislature mandated that Internal Accessory Dwelling Units (IADUs) be permitted in homes throughout the State with certain conditions. (See Utah Code 10-9a-530 <https://le.utah.gov/xcode/Title10/Chapter9a/10-9a-S530.html>). The Town of Brighton adopted an IADU ordinance that year which followed most of the restrictions allowed under State Code for IADUs.

(https://brighton.municipalcodeonline.com/book?type=ordinances#name=19.42.030_ACCESSORY_DWELLING_UNITS,_INTERNAL)

Some key requirements to have an IADU are:

- 1) Minimum lot size 6,000 sf
- 2) Must have parking for both units (1 for house, 1 for IADU)
- 3) No more than 4 people occupying the IADU
- 4) Written approval from the water company
- 5) IADUs shall not be located in a detached accessory structure connected by a Breezeway.
- 6) Must be occupied as the owner's primary residence
- 7) Short term rental (STR) use prohibited.
- 8) Existing non-compliant IADUs may come into compliance by receiving a permit and verifying existing work was done according
- 9) IADUs used for housing that does not include the payment of rent or other monetary compensation will follow the same approval process as all other IADUs including recordation of the Affidavit and Notice except that a business license is not required.

The planning commission and the short-term rental subcommittee discussed whether to keep the requirement that neither unit of a home with an IADU cannot be rented out as a short-term rental individually. . The Town made an interpretation that if the home was rented out as a whole (both units), it could be rented as a short-term rental. Staff would like to revisit that interpretation due to a closer reading of the code, the intent of the statute and enforcement issues.

In 2023, staff was under the impression that there was only 1 IADU in the town limits. It came to light that there are at least 6 homes that have a separate dwelling – some approved in the past as IADUs and some not (all of these homes have STR licenses), and 2 homes which were recently built who have included an IADU but who wish to rent out the entire property as an

STR. Staff is reviewing the homes that have STR licenses and also have second dwellings or second kitchens and is issuing nonconforming use determinations for them.

Because of the reliance on the statements made in public meetings that if the entire property is rented out, it could be used as an STR, Staff has allowed that use. As part of the IADU process, the owner must sign an affidavit. That affidavit referred to the requirements in the Brighton Code. Recently, the affidavit was updated to clear that the only way to use the home as an STR is to rent out the entire home (in order to reflect the prior statements by staff). Based on the decision by Planning Commission and Council the language of the affidavit would be amended.

Issues:

SHOULD STR USE BE PROHIBITED EVEN IF THE ENTIRE PROPERTY IS RENTED?

The Planning Commission should consider language to clarify if there is an IADU on a property whether or not the owner can rent out the entire property as an STR. The policy decision was made previously that if a home has an IADU neither unit can be rented as an STR. The Town also decided previously that the owner must live in one of the units as their primary residence.

The Code requires that if an owner decides to put an IADU in their home, they must live in the home as their primary residence. In order for a property to have an IADU, the owner is required to sign an affidavit swearing that it is the primary residence. Therefore, **if the home is the owners' primary residence then it is not possible to rent out the entire home.** The only way that could be possible is if someone (and their long term renter) left for a portion of the year and rented out the entire home when they were gone. To allow STR in the home, makes the affidavit meaningless and means they aren't complying with the requirements.

There are impacts in the canyon to having more than one dwelling on a property. The intent behind the statute is to create more long-term rentals. The State determined that the trade off of having IADUs to create long term rentals under limited circumstances such as having it be the primary residence of the owner, was worth the impacts.

Additionally, allowing properties with IADUs to be STR makes enforcement difficult. It's difficult for staff to determine if there are more than two units being used in a home. By not allowing STR in homes that have IADUs, there will be a bright line that the use is not permitted.

Suggested language is:

M. Short-Term Rental Use Prohibited. No part of the property with an IADU shall be used as a short term rental. This prohibition applies to the entire home, the primary dwelling and the IADU. Units approved as IADUs shall not be used as short term rentals. Any rentals shall be for 30 consecutive days or more.

HOW SHOULD THE SECOND DWELLING BE DEFINED?

Under the current definition of the Brighton Code, a dwelling unit has separate bathroom and facilities for cooking and sleeping and is separated from the rest of the rooms. The Brighton definition should be clarified as to what “facilities for cooking means” Should we regulate the size of appliances or drain size? Are cooking facilities only kitchens with a stove or would it qualify if there was a microwave? Should the Town consider a separate area of the home with a wet bar, bedrooms, toilet as a unit (since a microwave could be plugged in) – or would there need to be a kitchen to define it as a dwelling unit? (see end of this report for some ordinance language to be considered).

WHAT HAPPENS IF OWNER STOPS LIVING IN HOME FULL TIME (OR SELLS IT TO SOMEONE WHO DOESN'T LIVE THERE FULL TIME)?

- Can't rent home out either as an STR or as a long term rental.
- Remove IADU (by removing kitchen)

Staff Recommendation:

1. Staff recommends not allowing STRs in homes with IADUs and updating the ordinance language to make that clear.
2. Update code to make clear what cooking facilities means.

Attachments:

- 1) Proposed Ordinance and Amended Language
- 2) Handout to Council on 8.13.2024 regarding rules for IADUs

Current Brighton Code:

19.04.020 GENERAL DEFINITIONS

19. "Dwelling Unit (d.u.)" means one or more rooms physically arranged so as to create an independent housekeeping establishment for occupancy by one family with separate toilets and facilities for cooking and sleeping. Buildings with more than one (1) kitchen or set of cooking facilities are considered to contain more than one (1) dwelling unit unless the additional cooking facilities are clearly accessory to a dwelling unit as determined by the development services director. Factors for determining whether cooking facilities are accessory to a dwelling unit may include but are not limited to:

- a. A building design which allows all occupants ready access to all portions of the building including cooking facilities;
- b. No portion of the building containing cooking facilities can be separated from the remaining rooms to form a separate dwelling unit;
- c. There is only one electric and/or gas meter for the building.

66. "Second Kitchen" means an additional kitchen with typical appliances and surfaces including a range and/or the 220v or gas hookups for a range. A wet bar without the range or hookups is not considered a kitchen. Second kitchens are only permitted as a part of an Interior Accessory Dwelling Unit.

State Code - 10-9a-103. Definitions.

- (1) "Accessory dwelling unit" means a habitable living unit added to, created within, or detached from a primary single-family dwelling and contained on one lot.

Other municipal definitions for kitchens:

Springdale - 10-2-2 Kitchen:

- Any room and/or other place used or intended or designed to be used for cooking for the preparation of food

PROVO CITY'S CODE DEFINITION OF KITCHEN:

"Kitchen" means any room or space used or intended or designed to be used for cooking or for the preparation and/or serving of food, including such areas as wet bars and snack bars, notwithstanding whether such room or space is located within a primary dwelling structure or a structure accessory to the dwelling and finished as an addition to the living, working, or recreational space within the dwelling as may be permitted under the provisions of this Title. Facilities that establish the use of a room or space as a kitchen include refrigerators, stoves, other cooking appliances, built-in cabinets, sinks, garbage disposal units, 220 voltage and/or natural gas supply lines, in any combination intended to permit any room or space to be used as a kitchen.

(potential ordinance language regarding "dwelling unit" and "kitchen")

19.04.020 GENERAL DEFINITIONS

19. "Dwelling Unit (d.u.)" means one or more rooms physically arranged so as to create an independent housekeeping establishment for occupancy by one family and containing with separate at least one toilets, a kitchen, and facilities for cooking and sleeping. Buildings with more than one (1) kitchen ~~or set of cooking facilities~~ are considered to contain more than one (1) dwelling unit. ~~unless the additional cooking facilities are clearly accessory to a dwelling unit as determined by the development services director. Factors for determining whether cooking facilities are accessory to a dwelling unit may include but are not limited to:~~

~~a. — A building design which allows all occupants ready access to all portions of the building including cooking facilities;~~

~~b. — No portion of the building containing cooking facilities can be separated from the remaining rooms to form a separate dwelling unit;~~

~~c. — There is only one electric and/or gas meter for the building.~~

33. "Kitchen" means a room or area designed to be used for food preparation and cooking which contains at a least: one (1) sink, one (1) hard surface for food preparation, and one (1) oven/ cooktop stove and/or electrical or gas hookups to accommodate such.

66. "Second Kitchen" means an additional kitchen with typical appliances and surfaces including a range and/or the 220v or gas hookups for a range. Second kitchens are only permitted as a part of an Interior Accessory Dwelling Unit.. A wet bar without the range or hookups is not considered a kitchen so long as it is clearly accessory. to a dwelling unit as determined by the development services director. Factors for determining whether cooking facilities are accessory to a dwelling unit may include but are not limited to:

a. A building design which allows all occupants ready access to all portions of the building including cooking facilities;

b. No portion of the building containing cooking facilities can be separated from the remaining rooms to form a separate dwelling unit; Second kitchens are only permitted as a part of an Interior Accessory Dwelling Unit.